

03/03/2000 09:00:21 AM

Page 1

**1999 DRAFTING REQUEST****Senate Substitute Amendment (SSA-SB125)**

Received: 03/03/2000

Received By: nelsorp1

Wanted: Soon

Identical to LRB:

For: Gary George (608) 266-2500

By/Representing: Dan Rossmiller

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: **Drunk Driving - penalties**  
**Drunk Driving - procedures**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Operating a motor vehicle while intoxicated; penalties and procedures

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	nelsorp1	p1-3-7-2000 Kmg	CH 3-10	CH 3-10			
		p2-3-9-2000 Kmg	3/10	3/10			
FE Sent For:		1-3-10-2000 Kmg					

20 not 20  
3/10

<END>



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
P. O. BOX 2037  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
REFERENCE SECTION: (608) 266-0341  
FAX: (608) 266-5648

STEPHEN R. MILLER  
CHIEF

RPN

Done!

May 3, 1999

### MEMORANDUM

**To:** Senator George

**From:** Robert P. Nelson, Sr. Legislative Attorney, (608) 267-7511  
Paul E. Nilsen, Legislative Attorney, (608) 261-6926

**Subject:** Technical Memorandum to 1999 SB 125 (LRB 99-2513/1)

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We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

**DATE:** April 27, 1999

**TO:** LRB

**FROM:** Jim Thiel, DOT, Office of General Counsel

**SUBJECT:** Technical Memo re. SB 125, relating to Operating While Intoxicated

**Section 10:**

We are concerned that the present language will require DMV to order IID's as a restriction on all motor vehicles, including commercial motor vehicles. We believe it is probably the author's intent to exclude commercial motor vehicles. If so, please consider an amendment to Section 10.

**Section 14:**

Because DMV does not track a time period for fees paid, we request consideration of an amendment to remove "within the past 2 years" from Section 14.

## 1999 Session

☒ ORIGINAL ☐ UPDATED  
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

SB125

Amendment No. if Applicable

## FISCAL ESTIMATE

DOA-2048 N(R10/94)

**Subject** Operating a motor vehicle while under the influence; installation of an IID; safe-ride grant program, etc.; making an appropriation and providing penalties.

## Fiscal Effect

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation.

☒ Increase Costs - May be possible to Absorb  
Within Agency's Budget ☐ Yes ☒ No

☒ Increase Existing Appropriation ☒ Increase Existing Revenues  
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues  
☐ Create New Appropriation

☐ Decrease CostsLocal: ☐ No local government costs

1. ☒ Increase Costs  
☒ Permissive ☐ Mandatory  
2. ☐ Decrease Costs  
☐ Permissive ☐ Mandatory

3. ☐ Increase Revenues  
☐ Permissive ☐ Mandatory  
4. ☐ Decrease Revenues  
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities  
☐ Counties ☐ Others \_\_\_\_\_  
☐ School Districts ☐ WTCS Districts

## Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

## Affected Ch. 20 Appropriations

20.395(5)cq, 20.395(5)er

## Assumptions Used in Arriving at Fiscal Estimate

## Conclusion:

1. No data processing changes are required.
2. DMV: 13.5 FTE (TCR4 @ \$36,900) for salary and fringe of \$498,200 for increased juvenile alcohol suspensions. One time costs of \$116,830 to equip 14 people @ \$8,345 for PC equipment, phone, and materials and supplies.
3. DMV: Increasing forfeitures results in an indeterminable increase in failure to pay forfeiture cases. This also results in an increase in operating while suspended (OWS) and operating after revocation (OAR) cases.
4. DMV: There may be a net "no change" in title stop work because of making title stops includes all refusals and OWI convictions, and a reduction because vehicle seizure becomes an option.
5. DSP: Indeterminable increase in costs for new chemical test coordinators to handle a additional legal challenges related to BAC/OWI.
6. Trans Fund revenue for increase in occupational licenses and reinstatements for juvenile alcohol suspensions = \$1,209,300.
7. New appropriation revenue for Safe Ride grant program grants of about \$37,400.
8. BOTS: Indeterminable costs to administer Safe Ride program.
9. Local costs: Indeterminable increase in costs for new chemical test coordinators to handle additional legal challenges related to BAC/OWI.

## Basis for conclusion:

**Mandatory operating privilege suspension for underage alcohol (juvenile alcohol suspensions):**

- Approximately 1/3 of those convicted of juvenile alcohol violations were reported to DOT for driver license suspension in 1998. Note: Some courts do not report the conviction to DOT if a court mandated treatment or education program is completed.
  - The number of convictions was approximately 40,000; the number of suspensions was 12,200.
  - Making the suspension mandatory would increase the juvenile alcohol suspensions by about 27,800 cases annually. (40,000 - 12,200 = 27,800) This is a conservative estimate because there is no way of knowing how many convictions are being "dismissed" by courts for successful completion of voluntary education or treatment programs.
- Processing the suspensions. 27,800 x 16.2 minutes per unit (Bureau of Driver Services) = 4.35 FTE  
(1 production FTE = 1,725 hours)

## Long-Range Fiscal Implications

Increasing Juvenile Alcohol suspensions forces DMV to continue to rely on overtime and LTE funding to keep up with the increasing demand on DMV resources for processing non-driving related suspensions. In the absence of these funds, significant backlogs occur in entering convictions on the driving record which can result in serious problems for law enforcement, courts and prosecutors.

Agency/Prepared by: (Name & Phone No.)  
DOT/DMV Eileen Ostrowsky  
(608) 266-1449

Authorized Signature/Telephone No.  
Roger D. Cross 266-2233

by *[Signature]*

Date  
4/27/99

**Mandatory operating privilege suspension for underage alcohol (juvenile alcohol suspensions), continued:**

- About 55% actually reinstate.  $55\% \times 27,800 = 15,290$  cases.  
 $15,290 \times 18.5$  minutes to handle a reinstatement (Bureau of Field Services) = 2.73 FTE.
- About 40% get an occupational license.  $40\% \times 27,800 = 11,120$  cases.  
 $11,120 \times 25.8$  minutes to issue an occupational license (BFS) = 2.77 FTE.  
 $11,120 \times 15.1$  minutes to issue an occupational license (BDS) = 1.62 FTE
- 50% of those convicted contact DMV by phone for information (BDS):  $50\% \times 27,800 = 13,900$  cases.  $13,900 \times 5$  minutes = .67 FTE.
- 20% of those obtaining an occupational license contact DMV by phone for information (BDS).  $20\% \times 27,800 = 5,560$  cases.  $5,560 \times 5$  minutes = .27 FTE.
- About 25% have a reduction in penalty, requiring record changes.  $25\% \times 27,800 = 6,950$  cases.  $6,950 \times 16.2$  minutes per reduction case = 1.09 FTE.
- Additional revenue from increased Juvenile alcohol caseload = \$1,209,300. (For occupational license and reinstatement only; see below for increased revenue for Safe Ride Program):  
About 40% get an occupational license.  $40\% \times 27,800 = 11,120$  cases.  $11,120 \times \$40 = \$444,800$   
About 55% actually reinstate.  $55\% \times 27,800 = 15,290$  cases.  $15,290 \text{ cases} \times \$50 = 764,500$ .

**Blood Alcohol Concentration:**

- If there are a substantial number of additional BAC/OWI challenges in court, and the Division of State Patrol (DSP) chemical test coordinators are required to provide additional expert testimony beyond the current level, the DSP would have to hire additional Coordinators and would incur additional costs for travel, lodging, meals and overtime. (Average annual salary, including fringe is \$21,874.)
- Increase in costs due to increase in testing at lower illegal BAC and for any re-testing due to increase in penalties

**Seizure of Vehicle Not Required on 4<sup>th</sup> offense:**

- DMV: Reduce the number of stop flags on title processing.
- DSP and local law enforcement: Any reduction in vehicle seizures reduces law enforcement costs. (Towing, up to \$100; storage, up to \$35 per day; court forfeiture filing fee, \$120.)

**Safe Ride Program:**

- In 1998, an Ignition Interlock Device (IID) was ordered for 1,698 cases. It is unknown whether courts will order IID more frequently.
- About 40% get an occupational license.  $40\% \times 1,698 = 679$  cases.  $679 \times \$30.10$  Safe Ride fee on occupational license = \$20,400.
- About 55% of those suspended reinstate. The Safe Ride fee is only applicable to those with an IID ordered who did not pay the Safe Ride fee when obtaining an occupational license.  $1,698 \text{ cases} - 679 \text{ occupational licenses} = 1,019$  cases.  $55\% \times 1,019 = 560$  reinstatement cases.  $560 \text{ reinstatement cases} \times \$30.40 = \$17,000$ .
- Total estimated revenue for Safe Ride Program = \$37,400.

**FISCAL ESTIMATE WORKSHEET****1999 Session**Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R1298)
☒ ORIGINAL    ☐ UPDATED  
☐ CORRECTED    ☐ SUPPLEMENTAL
LRB or Bill No./Adm. Rule No.  
SB125

Amendment No.

Subject Operating a motor vehicle while under the influence; installation of an IID; safe-ride grant program, etc.; making an appropriation and providing penalties.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Equip 14 people x \$8,345 = \$116,830

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations - Salaries and Fringes		\$ 498,200	\$ -
(FTE Position Changes)		(13.5 FTE)	(- FTE)
State Operations - Other Costs			-
Local Assistance			-
Aide to Individuals or Organizations			-
TOTAL State Costs by Category		\$ 498,200	\$ -
<b>B. State Costs by Source of Funds</b>		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S		498,200	-
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S		1,246,700	-
TOTAL State Revenues		\$ 1,246,700	\$ -

**NET ANNUALIZED FISCAL IMPACT**STATELOCAL

NET CHANGE IN COSTS	\$ 498,200	\$ indeterminate
NET CHANGE IN REVENUES	\$1,246,700	\$ indeterminate

Agency/Prepared by. (Name & Phone No.)  
DOT/DMV Eileen Ostrowsky 266-1449Authorized Signature/Telephone No.  
Roger Cross 266-2233Date  
4/27/99

**Nelson, Robert P.**

---

**From:** Rossmiller, Dan  
**Sent:** Monday, March 06, 2000 11:16 AM  
**To:** Nelson, Robert P.  
**Subject:** OWI Legislation--Sub. Amdt.

Bob:

Just a quick note. Sen. George would like the changes drafted to SB 125.

Could you fold into the SB 125 the one-word change made in LRB a1284/1 that would add the department of health and family services to the study.

**Nelson, Robert P.**

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**From:** Rossmiller, Dan  
**Sent:** Monday, February 28, 2000 10:28 AM  
**To:** Nelson, Robert P.; Nilsen, Paul; Olsen, Jefren  
**Cc:** Sklansky, Ron  
**Subject:** Meeting on OWI legislation

In case you have not yet been contacted, concerned DOT staff and attorneys, members of the State Bar Criminal Law Section and attorneys from the Milwaukee County DA's Office are getting together to discuss their concerns and proposed modifications to the OWI legislation (AB 221/SB 125) on Thursday, March 2 at 3:215 p.m. in Room 222 South, State Capitol.

If your schedule permits, you are welcome to attend.





**STATE BAR  
of WISCONSIN**

5302 Eastpark Blvd.  
P.O. Box 7158  
Madison, WI 53707-7158

**LEGISLATIVE POSITION**

**To:** Members of the Senate Committee on Judiciary and Consumer Affairs  
**From:** Ralph Kalal, State Bar of Wisconsin Criminal Law Section  
**Date:** February 1, 2000  
**Re:** SB125/AB221—Drinking and Driving Bills

---

The State Bar of Wisconsin Criminal Law Section both opposes and supports parts of SB125 and AB221.

The Criminal Law Section supports efforts relating to repealing mandatory forfeiture of motor vehicles.

It also strongly supports the efforts being made to implement the Safe Rider Program.

The Criminal Law Section opposes the provisions as currently written regarding Ignition Interlock Devices, mandatory minimums for repeat offenders, underage violations, and increased penalties for higher BAC levels.

Specifically, the language in the substitute amendment to AB221 raised concerns in several areas.

**1. Ignition Interlock Devices (IID)—Section 7**

- If IID programs are to be piloted across the state, there should be language requiring uniformity of instruments and instrument certification to ensure that the devices being used are of a high quality and that results compared across the state will be consistent and accurate.
- If there is to be voluntary participation in the IID pilot programs, language should require courts to take participation in such programs as a factor in sentencing.

**2. Work Release Privileges—Section 12**

The Substitute Amendment to AB221 permits the department to refuse work release privileges to a person who fails to comply with a driver safety plan. This proposal raises at least four questions:

- Who within the DOC is entitled to make this determination—the local facility or DOC in Madison? Why is the Department making the determination instead of the local sheriff?

- What criteria will be used to determine "a failure to comply?"
  - When would a person be allowed to be re-released on Huber—when the appointment is rescheduled, attended, or never?
  - Are there any hearing rights that would be available to the accused when such a decision is made? Is the hearing to precede the loss of privileges?
- 3. Enforcement Issues Raising Constitutional Concerns—Section 17**
- There are questions on how to enforce a .02 BAC, since the margin of error in many tests given is +/- .02. How would this be enforced accurately given the current limitations on technology? For example, there is evidence that infrared spectroscopy tests are not sensitive at levels of .02 and can give false results.
  - Constitutionally, there are equal protection issues that will arise when the state presumes that a person has committed an element of an offense and an alcohol concentration lower than another person based on recidivism. The enforcement of the BAC should be uniform for every violation.
  - There are 13<sup>th</sup> Amendment issues raised regarding forfeiture.

The Criminal Law Section hopes the Committee will take the deficiencies in the bills into consideration when deliberating on them.

*If you would like more information about the Criminal Law Section's position on Drinking and Driving Legislation, feel free to contact Cory Mason at the State Bar of Wisconsin at 1-800/444-9404 x6128 or email him at [cmason@wisbar.org](mailto:cmason@wisbar.org). You can also contact Atty. Ralph Kalal at 608/255-9295 or Atty. Christopher Mutschler at 920/921-9299.*

LAW OFFICES OF  
BARRY S. COHEN, S.C.

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NO661 WILLOW ROAD  
ELKHART LAKE, WI 53020  
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E-MAIL: BSCLAW@EXECPC.COM

January 31, 2000

Senator Gary R. George, Chairman  
Senate Committee on Judiciary and Consumer Affairs  
State Capital  
P.O. Box 7882  
Madison, WI 53707-7882

*Re: Assembly Bill 221*

Dear Senator George:

I am unable to personally attend your committee hearing, but on behalf of the Wisconsin Association of Criminal Defense Lawyers, I am opposed to the passage of AB221 for the reasons set forth in this letter. The provisions which mandate the suspension of driver's licenses for all repeat underage alcohol offenses deprives judges of the discretions of whether or not to suspend the offenders driver's license. There are may instances where judges find that because of the circumstances a suspension of the driver's license is unwarranted.

Section 17 of the Bill changes the prohibited alcohol concentration (PAC) for operators of motor vehicles with three or more prior convictions from .08 to .02. I would suggest that if the legislature wants to further reduce the PAC for this class of drivers, it should simply drop the PAC to .00 (absolute sobriety). It would be impossible for anyone to gauge whether their alcohol level is above or below .02, but it would be easy for people to know whether their alcohol level was above .00.

Under Sections 18 & 19, all second offense OWI cases and all first offense refusal charges become subject to vehicle forfeiture. Later in Sections 34 & 39, however, only persons convicted of a third or subsequesnt offense are subject to vehicle forfeiture. I don't know if this is just bad drafting but the results of this Bill as drafted, would be that all persons charged with a second offense OWI and all persons charges with a first offense refusal, would be required to bring their vehicle titles in to be branded by the Clerk of Courts and the DOT would subsequently prohibit the transfer of ownership of the driver's vehicles. All of this takes place when, even if the person is convicted, the driver's vehicles are not subject to being forfeited.

*IID  
added  
under  
\$35 for  
1st offense*

Senator Gary R. George, Chairman

January 31, 2000

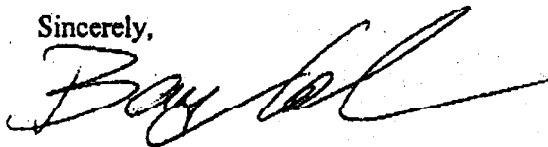
Page Two

*what about §.35?*

I would also like to suggest an amendment of Section 34. Under current law, if a motor vehicle is not ordered seized, the court shall order a law enforcement officer to equip the vehicle with an ignition interlock device or immobilize the vehicle. Most often, the judges order that the vehicle be equipped with an ignition interlock device. Consistent with the current language of the statutes, the order is an affirmative one requiring an ignition interlock device be installed in a vehicle. This presents a problem when a convicted driver simply chooses to stop driving. Ordering that driver to install an ignition interlock device in his or her vehicle would be an unreasonable waste of money. Rather, that statute should be amended to simply have the judge order that any vehicle operated by the convicted must be equipped with an ignition interlock device.

Thank you for your time and consideration.

Sincerely,



Barry S. Cohen, Member  
Wisconsin Association of Criminal Defense Lawyers  
Legislative Committee

BSC/dg

## CORRESPONDENCE MEMORANDUM

DT1175 97

Wisconsin Department of Transportation

Date: February 18, 2000  
To: Dan Rossmiller, Office of Senator Gary George  
From: John J. Sobotik, Assistant General Counsel  
Subject: AB 221, SB 125 Suggested Amendments

At the February 1, 2000, public hearing on AB221 and SB125, Senator George requested the department get back to him with regard to specific amendments to these bills recommended at the hearing.

WISDOT suggests 4 amendments to AB221/SB 125 be considered by the Senate (in priority order):

1. Set the effective date of the bill to be January 1, 2001. There are a variety of reasons for this. WISDOT will have difficulty implementing the law by that date because of the current ongoing rewriting of the computer software that processes suspensions and revocations. Implementing any law before May, 2001, when the new OAR law goes into effect, requires us to write all the needed computer changes twice: once in the old system (which requires extra effort to change), and once in the new system. DMV feels it can make the changes set forth in the current drafts in this bill by January 1, 2001. *? why not May 1, 2001*
2. Make provisions of the law dealing with seizure of a motor vehicle consistent with the Constitution by providing that only the vehicle involved in the offense may be seized. See State v. Konrath, Case No. 96-1261 (1998) (see decision at <http://www.courts.state.wi.us/html/sc/96/96-1261.HTM>).
3. Allow courts to impose any combination of ignition interlock requirements, vehicle immobilization or vehicle seizure after third offense rather than having to choose only one sanction.
4. Revise the IID law to shift the emphasis away from requiring IIDs on a specific vehicle and instead requiring a driver to have an IID when they drive. See discussion of ignition interlocks below. Such a rewrite of the law would, however, require an extended effective date for the affected provisions. DMV would suggest such provisions become effective January 1, 2002. In addition, the legislature may wish to consider sunseting the provisions so that the effectiveness of IIDs may be studied.

**If statutory provisions regarding IIDs, ignition interlocks and vehicle seizure are not rewritten, then the department recommends the technical amendments at the end of this document be considered.**

## Statutory Framework for Ignition Interlocks in Wisconsin

Problem: Under current law, ignition interlock devices are ordered to be placed on a specific vehicle owned by a drunk driver. This leaves a huge loophole in the law. A person who is ordered to have an IID on a specific vehicle can avoid the law by driving a different vehicle.

*But - aren't they on occ. license?*

In 1993, the occupational license law was revised to require IIDs of certain drivers holding occupational licenses. 1991 Wis. Act 277. Occupational license holders cannot avoid the IID requirement by driving a different car; the person is required to have an IID in any car they drive.

The department believes that the IID law should be rewritten to follow the occupational licensing example and tie IIDs to operating privileges. Then, an ignition interlock restriction would apply to any type of driver license a person holds during the period a person is required to have an IID. This will eliminate the loophole defendants now use to avoid the intent of the law: driving a car other than the car on which the IID was ordered.

### Recommended Methodology:

(1) Take IID and immobilization order provisions out of s. 346.65, Stats., and put them over in s. 343.30(1q), Stats., which is the statute in which courts make other orders affecting convicted drunk drivers such as driver license revocation and orders to go to assessment and treatment. IIDs and immobilization are remedial actions taken by courts to discourage future bad behavior and protect the public as a whole. They are not criminal sanctions and don't belong in the criminal penalty law.

(2) Take vehicle seizure provisions out of s. 346.65(6), Stats., and create a separate statute that deals with vehicle seizure. Leave fundamentals of law as proposed under ab221/sb125. Clean up the language of the statute so that it is clear that only the vehicle driven by the OWI offender is subject to seizure. Clarify that seizure, immobilization and ignition interlock can all occur at conviction, rather than there being only one choice for the court.

(3) Make the 343.30(1q) IID provision require the operating privilege of a driver be restricted for a period of time so that the person may not operate any vehicle without an IID other than:

- rental cars rented for not more than one week. (impractical when someone travels out of town)
- motorcycles (IIDs don't work on motorcycles)
- vehicles owned by employers, provided that the driver does not own an interest in the employer and is not related to the employer or its owners.
- any other vehicle type which the department, by rule, designates cannot practically be equipped with an IID device.

(4) Create an offense of "Operating a motor vehicle in violation of an IID restriction." Provide for a mandatory DMV suspension of operating privilege on conviction. (If the police catch such a driver, this is the citation they write.) We suggest a civil forfeiture of \$200 as a penalty. }?

*revocation?*

*What if 2<sup>nd</sup> or 3<sup>rd</sup> or  
Subs. OWI, still civil penalty?*

(5) If an IID provider discovers tampering or attempts to circumvent the device, the IID provider notifies WISDOT and the court that ordered the IID installed. DOT suspends the person's operating privileges. The person has 10 days to appeal to the court or the suspension takes effect. Appeal of DOT suspension is made to the court that ordered the IID under s. 343.30(1q). Court must hear the appeal, within 30 days. Issue at hearing is whether the ignition interlock device on the driver's car was tampered with or whether a person attempted to circumvent the device. (No requirement to prove who did it.) Permit DMV to require IID providers to file reports electronically. (Provides DMV with flexibility to modify the system in future years while implementing a paper system initially.)

*civil?*  
(6) Current law allows law enforcement to write a citation to a person who attempts to circumvent an IID on a vehicle. s. 347.413, Stats. Provide for automatic suspension of operating privileges for a definite period upon conviction for that offense. There is no need for the (5) appeal process in these cases because the driver's due process rights are protected in the civil forfeiture proceeding.

(7) Delete statutory requirements for DAs and Clerks to stamp titles of vehicles subject to IID or immobilization orders. Title stamping applies only to a vehicle driven in the offense (the only car potentially subject to seizure law). Provide that DMV may reissue title without a stamp or brand if person's OWI case is finally resolved (all appeals complete) and the vehicle was not ordered seized.

### **Technical changes needed if IID law is not rewritten**

If the IID provisions of Ch. 343 are not rewritten, the department suggests the following technical difficulties in AB221 / AB125 be addressed (for readability, this memo will refer to the specific provisions in engrossed AB221, LRB 3137/1):

1. Section 20 amends s. 343.10(5)(a)3., which calls for occupational driver licenses to be restricted to operation of IID equipped vehicles. IIDs cannot, however, be installed on Commercial Motor Vehicles or Motorcycles with current technology. If the IID provisions are not rewritten, DMV would still suggest that IID restrictions not apply to motorcycles or commercial motor vehicles. Otherwise, such vehicles can never be legally operated on occupational licenses.
2. Sections 34, 35 and 36 are needlessly confusing. It appears that the intent of section 35 is to create a new provision that allows for a court to order an IID installed upon any drunk driving conviction. If that is the case, there is no need to refer to IIDs at all in section 34 with respect to third and greater offenses. If clarity is desired, s. 34 could simply provide "In addition to any IID restriction ordered under par. 1d., the court may order..."

It appears that the current introductory language "Except as provided in this paragraph..." used in section 34 (346.65(6)(a)1. in current statutes) is not needed given the repeal of s. 346.65(6)(a)2. in section 36 of the bill. Under current law, that language is needed to clarify that mandatory sanctions apply in 4<sup>th</sup> and greater offenses and that 3<sup>rd</sup> offense sanctions are inapplicable in 4<sup>th</sup> and greater cases. There is no need for this language when mandatory sanctions are repealed.



**Nelson, Robert P.**

---

**From:** Sobotik, John  
**Sent:** Friday, March 03, 2000 3:58 PM  
**To:** Nelson, Robert P.  
**Subject:** RE: AB221 Report

I will think about it over the weekend. I have also informally asked the DOJ attorney that handled Konrath to look at that issue.

He, btw, off the cuff, is NOT convinced there is a constitutional problem taking vehicles in refusal cases.

- John

-----  
John Sobotik  
Assistant General Counsel  
Wisconsin Dept. of Transportation  
4802 Sheboygan Ave. Rm 115B  
P.O. Box 7910  
Madison WI 53707-7910  
Ph: (608) 267-9320  
Fx: (608) 267-6734

-----Original Message-----

**From:** Nelson, Robert P.  
**Sent:** Friday, March 03, 2000 11:30 AM  
**To:** Sobotik, John  
**Subject:** RE: AB221 Report

Do you think the court can order an IID operating privilege restriction or immobilization of the motor vehicle of a person who refuses testing if the person has one prior?

-----Original Message-----

**From:** Sobotik, John  
**Sent:** Friday, March 03, 2000 10:17 AM  
**To:** Nelson, Robert P.  
**Subject:** AB221 Report

My recollection of what was discussed, if helpful.

**AB221**

The Milw. Co. DA's office organized a meeting on AB221/SB225 yesterday. Attendees incl: Jeff Stone & Mike Prentis, Dan Rossmiller (Sen. George's office), Bob Donahoo & Tom McAdams (Milw. Co. DA's office), Nina Emmerson (UW Alcohol Resource Center), Ralph Kalal & ??? (State Bar), Bob Nelson (LRB) and me.

Donahoo ran the meeting. Senate substitute on 221/125 is expected with following features (assuming my memory and notes are good):

03/03/2000

**Nelson, Robert P.**

---

**From:** Sobotik, John  
**Sent:** Friday, March 03, 2000 11:26 AM  
**To:** Nelson, Robert P.  
**Subject:** RE: AB221 Report

I didn't hear / catch any of the safe rider grant discussion. I got the impression from Dan that he thought we shouldn't try to target moneys at any particular program or we'd create headaches / impediments to passage.

You might want to touch base with him before worrying about it.

- john

-----  
John Sobotik  
Assistant General Counsel  
Wisconsin Dept. of Transportation  
4802 Sheboygan Ave. Rm 115B  
P.O. Box 7910  
Madison WI 53707-7910  
Ph: (608) 267-9320  
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-----Original Message-----

**From:** Nelson, Robert P.  
**Sent:** Friday, March 03, 2000 10:21 AM  
**To:** Sobotik, John  
**Subject:** RE: AB221 Report

Thanks John. I have started working on the draft and will send you my first try hopefully by Tuesday for your review. We will need some help with the funding source for the safe-driver grant program since the statute (20.435 (6) (hx) was changed in the budget. Maybe the LFB is the place to talk to about that.

-----Original Message-----

**From:** Sobotik, John  
**Sent:** Friday, March 03, 2000 10:17 AM  
**To:** Nelson, Robert P.  
**Subject:** AB221 Report

My recollection of what was discussed, if helpful.

**AB221**

The Milw. Co. DA's office organized a meeting on AB221/SB225 yesterday. Attendees incl: Jeff Stone & Mike Prentis, Dan Rossmiller (Sen. George's office), Bob Donahoo & Tom McAdams (Milw. Co. DA's office), Nina Emmerson (UW Alcohol Resource Center), Ralph Kalal & ??? (State Bar), Bob Nelson (LRB) and me.

03/03/2000

Donahoo ran the meeting. Senate substitute on 221/125 is expected with following features (assuming my memory and notes are good):

#### **Vehicle Seizure**

- Fix State v. Konrath problem, allow seizure only of vehicles owned by defendant and operated in the incident.
- Jurisdiction for seizure proceeding is where defendant is convicted of OWI
- Eliminate mandatory seizure at 4th offense (effective immediately)- Give courts option of imposing multiple remedial sanctions.
- Move seizure provisions out of s. 346.65, Stats.

#### **BAC for People with 3 or more priors**

- Standard will apparently be set at absolute sobriety rather than at .02. Feeling in room was that people would understand 0.0 as absolute sobriety, but would think they could drink at .02. Susan Hackworthy's Senate testimony cited as evidence that 0.0 would work.
- There was a good deal of debate about the wisdom of putting someone in jail for 4 years based on their taking cough syrup if the OWI BAC level was set at 0.0. Milw. Co. DA's office pointed out how harsh that might turn out to be. I suggested they consider making 0.0 a separate offense -- a forfeiture -- and let the cops cite for that if their BAC is low OR for drunk driving if the driver's BAC is above .08. The group liked that approach. It sets an absolute sobriety requirement for repeat drunk drivers without being unduly harsh if they operate with some alcohol but not under the influence.

This new offense would NOT count as an OWI or prior OWI. Needs to be worked into administrative suspension so that people can't refuse testing.

#### **Increased penalties for High BAC**

The group went back over the ground of the 1986 bill that did this and the problems it caused. Donahoo told Legislators/Staff that it just doesn't work. The sentencing guidelines were explained so that the legislators understood that such a system is already in place and working. Donahoo suggested that if they wanted to do something in that arena that the legislature could simply raise the maximum fine for OWI. The maximum fine will be raised (to \$4000 I believe).

#### **Ignition Interlock Changes**

Basically adopted DOT's suggestions with regard to IID program. Agreed to give us till 1/1/2002 to implement. Otherwise double the cost to no particular advantage. Advantage to OWI of being on the news twice for one bill.

One question needs to be addressed: what IID providers do with evidence of high BAC tests on devices. Currently these are sent to the sheriffs, who just sit on them. Suggestion was to find a way to get them to treatment providers bcz alcohol consumption may violate abstinence requirement of driver's driver safety plan. Group wanted to send this info to WISDOT. I suggested that it should go straight to treatment provider -- otherwise, we'd be wasting time and money shuffling paper. Question is, can this be done, and if so, how? Gary?

#### **Underage Drinking Mandatory License Withdrawal**

Was raised in Donahoo's note, but not discussed. Donahoo pointed out that Milw. judges believe it license action should be discretionary, not mandatory. Donahoo says license sanction more severe than for drunk driving.

**Effective Date**

Except as noted above, 1/1/2001.

-----  
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Assistant General Counsel  
Wisconsin Dept. of Transportation  
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Madison WI 53707-7910  
Ph: (608) 267-9320  
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PEW

**Nelson, Robert P.**

**From:** Sobotik, John  
**Sent:** Friday, March 03, 2000 10:17 AM  
**To:** Nelson, Robert P.  
**Subject:** AB221 Report

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**COUNTY OF MILWAUKEE**

District Attorney's Office  
Inter-Office Communication

Date: March 2, 2000  
To:  
From: Robert D. Donohoo, Chief Deputy District Attorney  
Subject: A COMPARISON OF 1999 ASSEMBLY BILL 221 AND  
1999 ASSEMBLY BILL 125 AND FURTHER PROPOSALS

**SEIZURE OF MOTOR VEHICLES**

**Available Options**

Assembly Bill 221 and Senate Bill 125 are the same.

The present law is that after two prior convictions the court has the option of seizure, interlock, or mobilization. After three priors there is a mandatory seizure.

The proposed changes are many. First, a court may impose interlock after a first conviction [346.65(6)(a)1d]. Second, the present options that exist after two priors (seizure, mobilization, interlock) are made applicable to three and above situations.

DOT is proposing that for two and above that the court be allowed to impose any combination of interlock, seizure, and mobilization rather than the bill proposals for just one of the three options.

? Is Cohen's comment that the bill as written would make first-time refusal cases subject to a seizure correct?

**Where The Seizure Action Can Be Commenced**

Both AB 221 and SB 125 seem to be the same.

The present law is that the action to seize the vehicle must be brought where the motor vehicle was seized.

The new proposal is at sec. 346.65(6)(c). It appears to say that you can do it where the motor vehicle is seized, where the person was convicted of the refusal, or where the offense was committed. But why does it say committed instead of convicted? Is this because you can't seize prior to conviction?

**Effective Date Of Seizure Provision**

DOT is proposing that the effective date of the bill be January 1, 2001. Reasons are set forth in their February 18, 2000 memo.

It seems to me that the concerns that they raise would not be applicable to the seizure of motor vehicle changes in the law. Therefore I would propose that the seizure part of the law be made effective as soon as possible to offenses committed on or after a specified date, perhaps the day after the publication of the bill. If there is a problem with municipal courts getting geared up to use the interlock provision, then the effective date of that provision could be with the rest of the bill. *Make w/in 4 months*

**What Vehicle Is Subject To Seizure**

Neither Assembly Bill 221 nor Senate Bill 125 address this issue.

There is a great unclarity in the present law as to what vehicle or vehicles can be seized. For example, present section 346.65(6)(a)1g at various parts states "a motor vehicle," "the motor vehicle," "any motor vehicle owned by the person." This needs to be clarified.

DOT in their February 18, 2000 memorandum proposes that the law be changed to state that only the vehicle involved in the offense may be seized. *owned by*

**Placement Of Seizure Provisions In The Statutes**

DOT recommends that the car seizure provisions be taken out of sec. 346.65 and be placed somewhere else. This appears to have merit. *Ch. 343*

**THE BLOOD ALCOHOL CONCENTRATION  
IF A PERSON HAS THREE OR MORE PRIORS**

The present prohibited BAC in this situation is .08.

The proposal is that if you have three or more prior convictions it goes down to .02.

Both bills are the same. *00*

The statute is 340.01(46m)(c).

One issue that has to be resolved is whether the machines at that low level are accurate within a permitted tolerance. See Ralph Kalal's memo dated February 1, 2000.



Barry Cohen in his January 31, 2000 letter suggests that if something is going to be done and it's going to be that low, why not just make it absolute sobriety.

Another potential issue is will this encourage people to absolutely never take a test willingly? 00

Another problem is going to be the *State v. Alexander*, problem. Basically under the present law if we charge a person with the BAC .08, we cannot tell the jury about his prior convictions so that the jury just thinks it is a regular drunk driving with a .08. We are going to have to relitigate this issue if it goes down to .02.

Kalal raises some constitutional concerns in his letter.

#### **INCREASED REGULAR MINIMUMS IN SOME CASES**

AB 221 proposed increased minimum jail in some cases. For seconds it went up 30 days; for thirds, it went up 50 days; and for fourths, it went up to 120 days. All are now gone in the engrossed Assembly Bill 221. OK

None of the above provisions are in Senate Bill 125.

#### **INCREASED PENALTIES FOR HIGH BLOOD ALCOHOL CONCENTRATION**

The original AB 221 increased both the jail and fines for seconds and above in some situations based upon the blood alcohol concentration. Take out --  
Engrossed Assembly Bill 221 just now increases the minimum and maximum inc max?  
fines or forfeitures.

Senate Bill 125 has the original AB 221 provisions that increase both the maximum and minimum fines and forfeitures and imprisonments.

Increasing the imprisonment is an idea that has severe unintended consequences. No one will ever take a test. I suppose that increasing the minimum and maximum fines or forfeitures is better than the original bill but still it would be better if that entire provision was struck. It's not going to raise that much more money, and the hassle that it is going to cause to law enforcement and overall enforcement of the law is totally counterproductive.

#### **IGNITION INTERLOCK CHANGES**

DOT in their February 18, 2000 memorandum have proposed extensive changes to the present ignition interlock law.

Their memorandum points up one problem with the present law which is that the person can avoid the law by driving a different vehicle.

The present law provides that the ignition interlock reports are sent to the Sheriff's Department. However, it doesn't say what is to be done with them; more importantly, there is no violation for violating the interlock provision. This needs to be fixed. It appears that the proposal by DOT to create an offense of operating motor vehicle in violation of interlock restriction would possibly fix that loophole in the law.

Ralph Kalal in his February 1, 2000 letter raises some issues as to the ignition interlock devices.

See also the last paragraph of Cohen's letter.

#### **WORK RELEASE PRIVILEGES**

Kalal in his February 1, 2000 letter raises some issues as to this matter.

#### **UNDERAGE DRINKING LICENSE ISSUES**

Cohen raises an issue as to the fact that revocation will be mandatory. He believes it should remain discretionary. The three City of Milwaukee municipal judges believe it should be discretionary.

As to the lengths of the suspension/revocation, I was told that in some cases it is longer than a person who is convicted of drunk driving.

RDD/kl  
Word (Lbills)  
comparison

*fixed  
in Eng.*

Mr. Chairman and Members of the Senate Judiciary Committee:

Good morning. My name is Dennis Hughes, and I am the Chief of the Safety Policy Analysis Section for the Wisconsin Department of Transportation. With me is John Sobotik, who is an attorney in our Office of General Counsel. We appreciate the opportunity to share with you the agency's comments and concerns on Assembly Bill 221.

Without question, AB-221 is an ambitious package of good ideas designed to make Wisconsin's streets and highways safer from the hazards posed to all of us by drunk drivers. If and when AB-221 is enacted into law, we believe it will be an important step forward in this arena.

The Department supports the bill's provision to provide additional funding for pre-trial intoxicated driver intervention programs, but I must point out that similar additional funding was provided for in the biennial budget bill last fall. Milwaukee County's intensive supervision program has earned national recognition as an innovative and effective approach to dealing with repeat drunk drivers. We are carefully monitoring similar pre-trial intervention programs that have started up in Kenosha, Waukesha, Eau Claire and Marathon Counties. We also know that several other counties are awaiting funding assistance to start up similar intervention programs, and the additional funding will certainly help in that regard.

The Department also supports the bill's provision to create a new grant program to support local Safe Ride Programs. We look forward to working with local officials and businesses in putting these funds to good use in a variety of Wisconsin communities.

However, the Department has several technical and administrative concerns about the bill in its current form that I would like to share with you.

- (1) Expansion of the use of Ignition Interlock Devices (or "IID's") as an option for the court to order following chemical test refusals and conviction for 1<sup>st</sup> offense drunk driving is consistent with the sentiments of the 1995 Governor's Task Force on Operating After Revocation and Operating While Intoxicated. While the Department supports the expanded use of IID's, as currently drafted, AB-221 gives repeat offenders an opportunity to skirt the intent of the IID law by simply installing an IID on "a" vehicle that they own, then finding a different vehicle to drive. A more effective approach would be to tie the IID restriction to the offender's driving privilege so that any vehicle they operate must be IID-equipped.

*But - if  
conviction, rev,  
occ license +  
occ license has  
restriction*

- (2) We are also concerned about situations in which an offender tampers with an IID after installation. An approach that would be less burdensome to the Department would be to have the IID vendor notify the Division of Motor Vehicles that tampering has occurred. At that point, DMV would simply cancel the offender's license. If the offender disagrees with the cancellation, then they could appeal the decision to the court in which the IID order originated. This would relieve the Department from

*occupational*

responsibility for administrative review of such appeals, which could be numerous if IID use becomes much more common in Wisconsin, and it would give that power to the courts, who are much better equipped to weigh the circumstances of each case and take appropriate action.

- (3) The bill requires the Department to define, by administrative rule, a "statewide IID program." While the existing rule (TRANS 313) can be revised to incorporate the elements required, the agency does not have sufficient staff resources to exercise full oversight and monitoring of IID vendors that operate in this state.
- (4) Making vehicle seizure an option available to the court when sentencing 4<sup>th</sup> and subsequent offense drunk drivers is also consistent with the sentiments of the 1995 Governor's Task Force on Operating After Revocation and Operating While Intoxicated. However, it would be desirable to amend the language to be consistent with a recent Wisconsin Supreme Court ruling [State v. Konrath, 218 Wis 2d 290 (1998)] that the motor vehicle involved in the drunk driving incident is the only vehicle that may be ordered seized (as opposed to "any" motor vehicle owned by the offender).
- (5) It would also be desirable to amend the bill to give courts the latitude to order vehicle seizure or immobilization in addition to placing an IID restriction on the driver license of 3<sup>rd</sup> or subsequent offense drunk drivers (instead of limiting the court to choosing only one of the three vehicle sanctions).
- (6) Mandatory driver license suspension for all repeat Juvenile Alcohol offenders and for all juveniles with repeat Open Container violations may

X what if  
owned by  
others &  
A owns a  
MV

result in significant workload increases for Department staff, especially if the agency has to assume responsibility for recording all Juvenile Alcohol offenses adjudicated in municipal courts.

- (7) Requiring a study of alcohol and other drug abuse treatment programs and other alternatives to incarceration for repeat drunk drivers is a good idea. However, the credibility of the study could be optimized if it was conducted by an outside consultant, instead of by DOT and Department of Corrections staff. Unfortunately, as currently drafted, AB-221 does not provide any funding for a study, regardless of who does the work.
- (8) To maximize the public attention paid to the many substantive changes to Wisconsin's drunk driving law that are embodied in AB-221 and to allow the Department sufficient time to revise administrative rules, it would be advantageous to delay the effective date for all elements of the bill to January 1, 2001 (rather than simply four months following publication). That said, given the variety of data processing system revisions that the agency has determined are necessary to implement the new Graduated Driver License law and Act 84 (the new Operating After Revocation law), it could be very difficult to complete all DP system revisions that AB-221 will require by January 1, 2001, much less within four months following the date of publication.

*Outside  
Consultant  
Recommended*

In conclusion, once again we thank the Committee for the opportunity to appear before you today to share the Department's comments and concerns about AB-221. If you have any questions about our testimony, we would be happy to answer them at this time.

**Nelson, Robert P.**

---

**From:** Rossmiller, Dan  
**Sent:** Monday, March 06, 2000 11:25 AM  
**To:** Nelson, Robert P.  
**Subject:** OWI Legislation

Bob:

One more thing:

I believe we discussed whether or not the existing language provides that SafeRide Grants may be awarded to a non-profit agency in addition to a county or city. It would be helpful politically for the language to specifically state this.

Dan

With 3 priors, have D.O.  
with a forfeiture

New offense - absolute sobriety  
for 1 person and 3 priors

Cannot stop only for this offense.

Local ordinance is conformity

---

<sup>should</sup>  
DOT get the IID reports,  
who ~~is~~ should report  
to treatment ~~center~~ provider

---

To treatment provider to be  
notified (by DOT) when a  
person is convicted of absolute  
sobriety violation after 3rd offense

PEN



**Nelson, Robert P.**

---

**From:** Sobotik, John  
**Sent:** Monday, March 06, 2000 2:42 PM  
**To:** Nelson, Robert P.  
**Cc:** Rossmiller, Dan  
**Subject:** Vehicle Forfeiture - Refusals

Bob:

I attach a copy of Davis v. Anchorage, 945 P.2d 307, which seems to indicate that the state CAN require vehicles to be forfeited as part of a civil refusal case.

I also talked informally with Jim Freimuth at DOJ who handled the State v. Konrath case for DOJ. His view is that the legislature shouldn't accept that requiring vehicle forfeitures as a result of refusal of chemical testing is necessarily unconstitutional. He suggests leaving the law allowing seizure on refusal in place and letting the AG defend the case if/when it arises. Obviously, Jim is speaking informally, not on behalf of the AG, but I respect his opinion that the law is not necessarily unconstitutional, as Mr. Kalal suggested at our meeting on Thursday.

AB 221 doesn't tinker with that law now. I'd suggest the final bill not touch that issue either (although some modification to statute numbers, etc. may be needed).

I will leave it to you to discuss this issue further with Dan Rossmiller and decide which direction their office prefers you proceed.

- John Sobotik

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John K. DAVIS, Appellant,

v.

MUNICIPALITY OF ANCHORAGE, Appellee.

No. A-6318.

Court of Appeals of Alaska.

Sept. 19, 1997.

After his motion to dismiss on double jeopardy grounds was denied by the District Court, Third Judicial District, Anchorage, Stephanie Rhoades, J., defendant was convicted of driving while intoxicated pursuant to his plea of no contest. Defendant appealed. The Court of Appeals, Mannheimer, J., held that forfeiture under municipal ordinance of vehicle used by intoxicated driver was not punishment for double jeopardy purposes.  
Affirmed.

Davis v. Municipality of Anchorage

Michael B. Logue, Gorton & Associates, Anchorage, for Appellant.

03/06/2000

James L. Walker, Assistant Municipal Prosecutor, and Mary K. Hughes, Municipal Attorney, Anchorage, for Appellee.

Before COATS, C.J., and MANNHEIMER, J., and RABINOWITZ, \*308  
Senior Supreme Court Justice. [FN\*]

FN\* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

## OPINION

MANNHEIMER, Judge.

The Municipality of Anchorage undertook an in rem forfeiture proceeding against a vehicle owned by John K. Davis. This forfeiture action was prosecuted under former Anchorage Municipal Code (AMC) 9.28.026, an ordinance which declared that any vehicle operated by an intoxicated driver, or any vehicle operated by a driver who refused to submit to a breath test, was subject to forfeiture as a "public nuisance". Based on proof that Davis had driven while intoxicated and had refused to submit to a breath test, the Municipality obtained forfeiture of Davis's vehicle. The Municipality also pursued criminal charges against Davis for these same two offenses.

In this appeal, Davis contends that once the Municipality secured forfeiture of his vehicle in the civil proceeding, the double jeopardy clauses of the federal and the Alaska constitutions prohibited the Municipality from pursuing the criminal charges against him. For the reasons explained in this opinion, we hold that the Municipality was entitled to pursue both the in rem forfeiture action and the criminal charges. [FN1]

FN1. Since the time of this litigation, the Municipality of Anchorage has amended AMC 9.28.026. The current version of the ordinance contains several changes that are arguably material to a double jeopardy analysis. We express no opinion concerning the current version of AMC 9.28.026.

## Facts of the case

Davis was arrested in Anchorage on February 17, 1995, for driving while intoxicated and refusing to submit to a breath test. His vehicle, a 1982 Ford, was seized at the time of his arrest. While Davis awaited trial on the two criminal charges, the Municipality pursued an in rem forfeiture action against the vehicle, and on May 12, 1995, Davis's vehicle was declared forfeit to the Municipality.

Davis asked the district court to dismiss the still-pending criminal charges.

He argued that the forfeiture of his vehicle amounted to a "punishment" for his acts of driving while intoxicated and refusing the breath test. Davis further contended that, because he had been punished once for these acts (by the forfeiture of his vehicle), the constitutional guarantees against double jeopardy prohibited the government from punishing him again for the same acts (by imprisonment or fine in the criminal case). See the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Alaska Constitution.

The district court rejected Davis's arguments and refused to dismiss the criminal charge. Davis then pleaded no contest to driving while intoxicated, preserving his double jeopardy argument for appeal. See *Cooksey v. State*, 524 P.2d 1251, 1255-57 (Alaska 1974).

## The forfeitures imposed under former AMC 9.28.026 were in rem forfeitures

In his brief to this court, Davis renews his argument that the forfeiture of his vehicle was a "punishment" for double jeopardy purposes. Under the United States Supreme Court's decision in *United States v. Ursery*, 518 U.S. 267, 116 S.Ct. 2135, 135 L.Ed.2d 549 (1996), it is clear that forfeiture of a person's property in an in rem civil forfeiture proceeding does not constitute "punishment" for purposes of the federal double jeopardy clause. Davis attempts to avoid this result by arguing that vehicle forfeiture proceedings under former AMC 9.28.026 were not really in rem proceedings, but were instead in personam forfeitures, a type of forfeiture generally recognized as "punishment". See *Ursery*, 518 U.S. at ---, 116 S.Ct. at 2147 (majority opinion) and 518 U.S. at ----, 116 S.Ct. at 2150-51 (concurring opinion of Justice Kennedy).

The law distinguishes between in personam forfeitures, which are inflicted as punishment for a crime, and in rem forfeitures, which can be inflicted on property owners who are themselves innocent of crime, if the government proves that the property is contraband or is connected to the commission of "309 a criminal act. See *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 684, 94 S.Ct. 2080, 2092, 40 L.Ed.2d 452 (1974); *The Palmyra*, 12 Wheat. 1, 14-15, 6 L.Ed. 531 (1827).

For instance, this court recently decided a case in which a defendant was subjected to an in personam forfeiture of his vehicle. See *Hillman v. Anchorage*, 941 P.2d 211 (Alaska App.1997). In *Hillman*, the defendant's vehicle was forfeited, not in a separate civil action, but at his sentencing for driving while intoxicated. The forfeiture was imposed as part of the defendant's sentence pursuant to former AMC 9.28.020 (C) (the statutory provision defining the penalties for driving while intoxicated), and the legal basis for the forfeiture was that the defendant had been found guilty of a crime.

[1] Such in personam forfeitures, imposed as part of a person's penalty for violating a criminal statute, must be distinguished from in rem forfeitures, which do not depend upon proof that the property owner is guilty of a crime, but which are based on proof that the property is contraband or is connected to or derived from some dangerous or unlawful activity. This distinction was explained in some detail by Justice Kennedy in his concurring opinion in *Ursery*:

The key distinction is that the instrumentality-forfeiture statutes are not directed at those who carry out the crimes, but at owners who are culpable for the criminal misuse of the property. See *Austin [v. United States]*, 509 U.S. 602, 619, 113 S.Ct. [2801,] 2810-2811, 125 L.Ed.2d 488 [ (1993) ] (statutory "exemptions serve to focus the provisions on the culpability of the owner"). The theory [of in rem forfeiture] is that the property, whether or not illegal or dangerous in nature, is hazardous in the hands of this owner because he either uses it to commit crimes, or allows others to do so. The owner can be held accountable for the misuse of the property. Cf. *One 1958 Plymouth Sedan [v. Pennsylvania]*, 380 U.S. 693, 699, 85 S.Ct. [1246,] 1250, 14 L.Ed.2d 170 (1965) [ ("There is nothing even remotely criminal in possessing an automobile. It is only the alleged use to which this particular automobile was put that subjects [the owner] to its possible loss.") ... Since the punishment befalls any propertyholder who cannot claim statutory [exemption], whether or not he committed any criminal acts, [the forfeiture] is not a punishment for a person's criminal wrongdoing.

Forfeiture, then, punishes an owner by taking property involved in a crime [.] [I]t may happen that the owner is also the wrongdoer charged with a criminal offense. But the forfeiture is not a second in personam punishment for the offense[.] *Ursery*, 518 U.S. at ----, 116 S.Ct. at 2150.

In *Ursery*, the Supreme Court reaffirmed that the government may pursue "parallel in rem civil forfeiture actions and criminal prosecutions based upon the same underlying events". The Court noted that, "in a long line of cases", it had "considered the application of the Double Jeopardy Clause to civil forfeitures" and had "consistently conclud[ed] that the Clause does not apply to such actions because they do not impose punishment." *Ursery*, 518 U.S. at ----, 116 S.Ct. at 2140.

[2] The question then, for double jeopardy purposes, is to distinguish civil in rem forfeitures from forfeitures that are "intended as punishment, so that the proceeding is essentially criminal in character". *Ursery*, 518 U.S. at ----, 116 S.Ct. at 2141, quoting *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 362, 104 S.Ct. 1099, 1105, 79 L.Ed.2d 361 (1984). To answer this question, the *Ursery* Court reviewed its past decisions in this area--specifically, *Various Items of Personal Property v. United States*, 282 U.S. 577, 51 S.Ct. 282, 75 L.Ed. 558 (1931), *One Lot [of] Emerald Cut Stones v. United States*, 409 U.S. 232, 93 S.Ct. 489, 34 L.Ed.2d 438 (1972) (per curiam), and *United States v. One Assortment of 89 Firearms*, supra--and then reaffirmed the two-part analysis it had used in those cases:

First, [a court must] ask whether [the legislature] intended proceedings under [the forfeiture statute] to be criminal or civil. Second, [a court must] consider whether the [forfeiture] proceedings are so punitive in fact as to "[demonstrate] that \*310 [they] may not legitimately be viewed as civil in nature," despite [the legislature's] intent. *89 Firearms*, 465 U.S., at 366, 104 S.Ct., at 1107.

*Ursery*, 518 U.S. at ----, 116 S.Ct. at 2147. Using this analysis as a guide, we conclude that the vehicle forfeitures imposed under former AMC 9.28.026 were in rem forfeitures, and that forfeiture proceedings under that ordinance were civil, not criminal.

Under subsection C(3) of the ordinance, a vehicle allegedly used in connection with either of the two specified offenses (driving while intoxicated or breath test refusal) could be seized and held for impoundment or forfeiture proceedings even if no criminal charges were ever filed against the driver. In fact, seizure of the vehicle apparently did not depend on whether the court could obtain in personam jurisdiction over the driver. Subsection C(3) provided that any court "having jurisdiction over the motor vehicle" could issue an order for seizure of the vehicle if the government demonstrated probable cause to believe that the vehicle was forfeitable under AMC 9.28.026. The same subsection declared that, even in the absence of an arrest, a police officer who had probable cause to believe that a vehicle was forfeitable could temporarily seize the vehicle and hold it for up to 2 days (so that a court order could be obtained to authorize a longer seizure). Moreover, under subsection A(6), even when criminal charges were filed against the driver, the court presiding over the forfeiture action (and not the court presiding over the criminal action) remained in control of the vehicle: "Any requests for release of a vehicle during the pendency of [the] in rem action" had to be "brought in the forum of the in rem action".

Forfeiture under former AMC 9.28.026 was not premised on whether the driver of the vehicle had been convicted of a crime. Rather, subsection A(11) declared that it was "not a defense to an in rem proceeding brought under [AMC 9.28.026]" that the person in possession of the vehicle was acquitted or was convicted of a lesser offense. And, under subsection A(3), it was likewise no defense that a criminal proceeding against that person remained unresolved. Once the Municipality established by a preponderance of the evidence that the vehicle had been used in connection with one of the two specified offenses, subsection A(7) allowed only one defense to forfeiture--that the vehicle owner "[was not] in possession of the vehicle and [was not] responsible for ... the act which resulted in the impound[ment] or forfeiture", and that the vehicle owner "did not know or have reasonable cause to believe" that the other person would operate the vehicle in violation of the law.

This analysis of former AMC 9.28.026 demonstrates that its forfeiture provisions were squarely aimed at "owners who [were] culpable for the criminal misuse of [their vehicle]", and that the forfeiture imposed by this ordinance was based on proof that the vehicle was "hazardous in the hands of this owner because either he use[d] it to commit crimes, or allow[ed] others to do so". *Ursery*, 518 U.S. at ----, 116 S.Ct. at 2150. The Anchorage Municipal Assembly plainly intended the forfeiture provisions to be civil, and our analysis of those provisions demonstrates that those provisions are not "so punitive in fact" as to belie that civil categorization. *Ursery*, 518 U.S. at ----, 116 S.Ct. at 2147.

[3] We therefore hold that forfeitures imposed under former AMC 9.28.026 were civil in rem forfeitures. It follows that vehicle forfeitures under former AMC 9.28.026 were not "punishments" for purposes of the federal double jeopardy clause. *Ursery*, supra. Under federal constitutional law, the forfeiture of Davis's vehicle did not bar the Municipality of Anchorage from prosecuting Davis for the crimes of driving while intoxicated and refusing a breath test.

#### **Davis's argument under the Alaska Constitution**

Davis argues that, even if the forfeiture of his vehicle did not constitute a "punishment" under federal double jeopardy law, we should interpret the Alaska double jeopardy clause differently. Davis cites *Whitton v. State*, 479 P.2d 302, 310 (Alaska 1970), in which the Alaska Supreme Court refused to follow federal precedent and instead adopted a different test for deciding when a defendant's violation of two criminal statutes constitutes the "same offense" for double jeopardy purposes.

[4] However, as we noted both in *State v. Zerkel*, 900 P.2d 744 (Alaska App.1995), and in *Aaron v. Ketchikan*, 927 P.2d 335 (Alaska App.1996), the fact that a clause of the Alaska Constitution has, on occasion, been interpreted differently from the corresponding provision of the federal Constitution does not mean that we are at liberty to ignore federal precedent at will. When a party asserts that a provision of the Alaska Constitution should be construed differently from its close federal counterpart, that party bears the burden of demonstrating "something in the text, context, or history of the Alaska Constitution that justifies this divergent interpretation". *Zerkel*, 900 P.2d at 758 n. 8, citing *Abood v. League of Women Voters*, 743 P.2d 333, 340-43 (Alaska 1987); *Aaron*, 927 P.2d at 336.

[5] Davis does not satisfy the requirement established in *Abood*, *Zerkel*, and *Aaron*. He argues that the Alaska Supreme Court has not followed federal law in defining "same offense" (viz., the *Whitton* decision), and he argues that the concept of double jeopardy should not be "static". But even acknowledging this to be true, Davis does not explain why civil forfeiture of a vehicle used by



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBs0372/P1  
RPN/PEN/JEO:kgjf

\*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE SUBSTITUTE AMENDMENT,

TO 1999 SENATE BILL 125

**\*UNPROOFED**

**COPY**

1 AN ACT *to repeal* 343.10 (5) (a) 3., 343.10 (7) (cm), 346.65 (6) (a) 2., 347.413 (2)  
2 and 800.03 (4); *to renumber* 343.30 (1p); *to renumber and amend* 940.09  
3 (1d) and 940.25 (1d); *to amend* 20.435 (6) (hx), 85.53 (1) (d), 125.07 (4) (bs)  
4 (intro.) and 2., 125.07 (4) (bs) 3. and 4., 125.07 (4) (c) (intro.) and 2., 125.07 (4)  
5 (c) 3. and 4., 125.07 (4) (e) 2. (intro.), 343.10 (5) (b), 343.30 (1q) (h), 343.30 (6)  
6 (b) (intro.), 343.30 (6) (b) 1. and 2., 343.30 (6) (b) 3., 343.303, 343.305 (3) (a),  
7 343.305 (3) (b), 343.305 (5) (b), 343.305 (9) (a) 1., 343.305 (9) (a) 5. a., 343.305  
8 (9) (d), 343.305 (10m), 344.576 (2) (b), 346.63 (2m), 346.65 (2) (b), 346.65 (2) (c),  
9 346.65 (2) (d), 346.65 (2) (e), 346.65 (2g) (a), 346.65 (2g) (b), 346.65 (2g) (c),  
10 346.65 (2m) (b), 346.65 (6) (a) 1., 346.65 (6) (a) 2m., 346.65 (6) (a) 3., 346.65 (6)  
11 (b), 346.65 (6) (c), 346.65 (6) (d), 346.655 (1), 346.655 (2) (a), 346.655 (2) (b),  
12 346.95 (2), 347.413 (1), 347.413 (3), 347.417 (1), 347.417 (2), 349.03 (2m), 349.06

(1m), 885.235 (1m), 885.235 (4), 938.344 (2) (intro.), 938.344 (2b) (intro.) and (b) and 938.344 (2b) (c); and *to create* 20.395 (5) (ek), 51.30 (4) (b) 25., 85.55, 110.10, 303.065 (2m), 303.08 (1) (cg), 303.08 (1) (cm), 303.08 (10m), 343.30 (1p) (b), 343.301, 343.305 (10) (eg), 346.63 (2g), 346.65 (2g) (ag), 346.65 (2n), 346.93 (2f), 346.93 (2g), 940.09 (1d) (a) and 940.25 (1d) (a) of the statutes; **relating to:** operating a motor vehicle while under the influence of an intoxicant or drugs, or both; installation of an ignition interlock device in cases involving intoxicated operation of a motor vehicle; seizure of motor vehicles for offenses related to driving while under the influence of an intoxicant; the prohibited alcohol concentration related to operating a motor vehicle while under the influence of an intoxicant; restrictions on prisoner release from jail or prison; creating a safe-ride grant program; creating an ignition interlock device program; pretrial intoxicated driver intervention grants; requiring a report on incarceration alternatives and ignition interlock devices; certain alcohol beverage offenses committed by persons under the legal drinking age; granting rule-making authority; making appropriations; and providing penalties.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 20.395 (5) (ek) of the statutes is created to read:

20.395 (5) (ek) *Safe-ride grant program; state funds.* From the general fund, all moneys transferred from the appropriation account under s. 20.435 (6) (hx) for the purpose of awarding grants under s. 85.55.

**SECTION 2.** 20.435 (6) (hx) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

1           20.435 (6) (hx) *Services related to drivers, receipts.* The amounts in the  
2       schedule for services related to drivers. All moneys received by the state treasurer  
3       from the driver improvement surcharge on court fines and forfeitures authorized  
4       under s. 346.655 and all moneys transferred from the appropriation account under  
5       s. 20.395 (5) (di) shall be credited to this appropriation. The secretary of  
6       administration shall annually transfer to the appropriation account under s. 20.395  
7       (5) (ek) 3.76% of all moneys credited to this appropriation from the driver  
8       improvement surcharge. Any unencumbered moneys in this appropriation account  
9       may be transferred to sub. (7) (hy) and ss. 20.255 (1) (hm), 20.285 (1) (ia), 20.395 (5)  
10      (ci) and (di) and 20.455 (5) (h) by the secretary of administration after consultation  
11      with the secretaries of health and family services and transportation, the  
12      superintendent of public instruction, the attorney general and the president of the  
13      university of Wisconsin system.

14           **SECTION 3.** 51.30 (4) (b) 25. of the statutes is created to read:

15           51.30 (4) (b) 25. To the department of corrections or to a sheriff, to determine  
16      if a person incarcerated is complying with the assessment or the driver safety plan  
17      ordered under s. 343.30 (1q) (c).

18           **SECTION 4.** 85.53 (1) (d) of the statutes is amended to read:

19           85.53 (1) (d) “Operating while intoxicated” means a violation of s. 346.63 (1),  
20      (2g) or (2m) or a local ordinance in conformity therewith or of s. 346.63 (2) or (6),  
21      940.09 (1) or 940.25.

22           **SECTION 5.** 85.55 of the statutes is created to read:

23           **85.55 Safe-ride grant program.** The department may award grants to any  
24      county or municipality or to any nonprofit corporation, as defined in s. 46.93 (1m) (c),  
25      to cover the costs of transporting persons suspected of having a prohibited alcohol

1 concentration, as defined in s. 340.01 (46m), from any premises licensed under ch.  
2 125 to sell alcohol beverages to their places of residence. The amount of a grant under  
3 this section may not exceed 50% of the costs necessary to provide the service. The  
4 liability of a provider of a safe-ride program to persons transported under the  
5 program is limited to the amounts required for an automobile liability policy under  
6 s. 344.15 (1). Grants awarded under this section shall be paid from the appropriation  
7 under s. 20.395 (5) (ek).

8 **SECTION 6.** 110.10 of the statutes is created to read:

9 **110.10 Ignition interlock device program.** The department shall  
10 promulgate rules providing for the implementation of an ignition interlock device  
11 program that will be conveniently available to persons throughout this state. The  
12 rules shall include provisions regarding all of following:

13 (1) The selection of persons to install, service and remove ignition interlock  
14 devices from motor vehicles.

15 (2) The periodic review of the fees charged to the owner of a vehicle for the  
16 installation, service and removal of an ignition interlock device.

17 (3) Requiring ignition interlock device providers operating in this state to  
18 establish pilot programs involving the voluntary use of ignition interlock devices.

19 (4) Requiring ignition interlock device providers operating in this state to  
20 provide the department and law enforcement agencies designated by the department  
21 with installation, service, tampering and failure reports in a timely manner.

22 (5) Requiring ignition interlock device providers to notify the department of  
23 any ignition interlock device tampering, circumvention, bypass or violation resets,  
24 including all relevant data recorded in the device's memory. Upon receiving notice



1 described in this subsection, the department shall immediately provide the notice  
2 and data to the provider that is administering the violator's driver safety plan.

3 SECTION 7. 125.07 (4) (bs) (intro.) and 2. of the statutes are amended to read:

4 125.07 (4) (bs) (intro.) Any person violating par. (a) ~~is subject to the following~~  
5 ~~penalties shall be penalized as follows:~~

6 2. For a violation committed within 12 months of a previous violation, ~~the~~  
7 ~~person's operating privilege shall be suspended under s. 343.30 (6) (b) 2. In addition,~~  
8 ~~the person is subject to either a forfeiture of not less than \$300 nor more than \$500,~~  
9 ~~suspension of the person's operating privilege as provided under s. 343.30 (6) (b) 2.,~~  
10 participation in a supervised work program or other community service work under  
11 par. (cg) or any combination of these penalties.

12 SECTION 8. 125.07 (4) (bs) 3. and 4. of the statutes, as affected by 1997  
13 Wisconsin Act 84, are amended to read:

14 125.07 (4) (bs) 3. For a violation committed within 12 months of 2 previous  
15 violations, ~~the person's operating privilege shall be suspended under s. 343.30 (6) (b)~~  
16 ~~3. In addition, the person is subject to either a forfeiture of not less than \$500 nor~~  
17 ~~more than \$750, suspension of the person's operating privilege under s. 343.30 (6)~~  
18 ~~(b) 3.,~~ participation in a supervised work program or other community service work  
19 under par. (cg) or any combination of these penalties.

20 4. For a violation committed within 12 months of 3 or more previous violations,  
21 ~~the person's operating privilege shall be suspended under s. 343.30 (6) (b) 3. In~~  
22 ~~addition, the person is subject to either a forfeiture of not less than \$750 nor more~~  
23 ~~than \$1,000, suspension of the person's operating privilege under s. 343.30 (6) (b) 3.,~~  
24 participation in a supervised work program or other community service work under  
25 par. (cg) or any combination of these penalties.

1           **SECTION 9.** 125.07 (4) (c) (intro.). and 2. of the statutes are amended to read:

2           125.07 (4) (c) (intro.) Any person violating par. (b) ~~is subject to the following~~  
3   penalties shall be penalized as follows:

4           2. For a violation committed within 12 months of a previous violation, the  
5   person's operating privilege shall be suspended under s. 343.30 (6) (b) 2. In addition,  
6   the person is subject to either a forfeiture of not less than \$200 nor more than \$300,  
7   ~~suspension of the person's operating privilege as provided under s. 343.30 (6) (b) 2.,~~  
8   participation in a supervised work program or other community service work under  
9   par. (cg) or any combination of these penalties.

10          **SECTION 10.** 125.07 (4) (c) 3. and 4. of the statutes, as affected by 1997  
11   Wisconsin Act 84, are amended to read:

12          125.07 (4) (c) 3. For a violation committed within 12 months of 2 previous  
13   violations, the person's operating privilege shall be suspended under s. 343.30 (6) (b)  
14   3. In addition, the person is subject to either a forfeiture of not less than \$300 nor  
15   more than \$500, ~~suspension of the person's operating privilege under s. 343.30 (6)~~  
16   ~~(b) 3.,~~ participation in a supervised work program or other community service work  
17   under par. (cg) or any combination of these penalties.

18          4. For a violation committed within 12 months of 3 or more previous violations,  
19   the person's operating privilege shall be suspended under s. 343.30 (6) (b) 3. In  
20   addition, the person is subject to either a forfeiture of not less than \$500 nor more  
21   than \$1,000, ~~suspension of the person's operating privilege under s. 343.30 (6) (b) 3.,~~  
22   participation in a supervised work program or other community service work under  
23   par. (cg) or any combination of these penalties.

24          **SECTION 11.** 125.07 (4) (e) 2. (intro.) of the statutes is amended to read:

1           125.07 (4) (e) 2. (intro.) After ordering a penalty under par. (bs) or (c), the court,  
2           with the agreement of the defendant, may enter an additional order staying the  
3           execution of the penalty order and suspending or modifying the penalty imposed,  
4           except that the court may not stay, suspend or modify the suspension of a person's  
5           operating privilege required under par. (bs) or (c). The order under this subdivision  
6           shall require the defendant to do any of the following:

7           **SECTION 12.** 303.065 (2m) of the statutes is created to read:

8           303.065 (2m) The department may not grant work release privileges to a  
9           prisoner who is imprisoned for a violation of s. 346.63 (1), (2), (5) or (6) and who fails  
10          to obtain the assessment or to comply with the driver safety plan ordered under s.  
11          343.30 (1q) (c) related to the violation for which he or she was imprisoned. This  
12          subsection does not apply if the prisoner does not have sufficient funds to make any  
13          payments necessary to obtain the assessment or to comply with the driver safety  
14          plan.

15          **SECTION 13.** 303.08 (1) (cg) of the statutes is created to read:

16          303.08 (1) (cg) Attendance at an assessment ordered by a court under s. 343.30  
17          (1q) (c);

18          **SECTION 14.** 303.08 (1) (cm) of the statutes is created to read:

19          303.08 (1) (cm) Attendance at a treatment program required by a driver safety  
20          plan under s. 343.30 (1q) (c);

21          **SECTION 15.** 303.08 (10m) of the statutes is created to read:

22          303.08 (10m) The sheriff may not permit a prisoner who is imprisoned for a  
23          violation of s. 346.63 (1), (2), (5) or (6) to leave the jail under sub. (1) if the prisoner  
24          fails to obtain the assessment or to comply with the driver safety plan ordered under  
25          s. 343.30 (1q) (c). This subsection does not apply if the prisoner does not have

1 sufficient funds to make any payments necessary to obtain the assessment or to  
2 comply with the driver safety plan.

3 SECTION 16. 343.10 (5) (a) 3. of the statutes is repealed.

4 SECTION 17. 343.10 (5) (b) of the statutes is amended to read:

5 343.10 (5) (b) *Limitations*. Occupational licenses are subject to the limitations  
6 specified in ss. 343.30 (1q) (b) and (h), 343.305 (8) (d) and (10) (b), (eg) and (em),  
7 343.31 (3m), 343.32 (1m), 767.303 and 961.50.

8 SECTION 18. 343.10 (7) (cm) of the statutes is repealed.

9 SECTION 19. 343.30 (1p) of the statutes is renumbered 343.30 (1p) (a).

10 SECTION 20. 343.30 (1p) (b) of the statutes is created to read:

11 343.30 (1p) (b) Notwithstanding sub. (1), a court shall suspend the operating  
12 privilege of a person for 6 months upon the person's conviction by the court for  
13 violation of s. 346.63 (2g) or a local ordinance in conformity with s. 346.63 (2g). If  
14 there was a minor passenger under 16 years of age in the motor vehicle at the time  
15 of the violation that gave rise to the conviction under s. 346.63 (2g) or a local  
16 ordinance in conformity with s. 346.63 (2g), the court shall suspend the operating  
17 privilege of the person for 12 months.

18 SECTION 21. 343.30 (1q) (h) of the statutes is amended to read:

19 343.30 (1q) (h) The court or department shall provide that the period of  
20 suspension or revocation imposed under this subsection shall be reduced by any  
21 period of suspension or revocation previously served under s. 343.305 if the  
22 suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63  
23 (1), (2g) or (2m) or a local ordinance in conformity therewith arise out of the same  
24 incident or occurrence. The court or department shall order that the period of  
25 suspension or revocation imposed under this subsection run concurrently with any

1 period of time remaining on a suspension or revocation imposed under s. 343.305  
2 arising out of the same incident or occurrence. The court may modify an occupational  
3 license authorized under s. 343.305 (8) (d) in accordance with this subsection.

4 **SECTION 22.** 343.30 (6) (b) (intro.) of the statutes, as affected by 1997 Wisconsin  
5 Act 84, is amended to read:

6 343.30 (6) (b) (intro.) If a court imposes suspension of a person's operating  
7 privilege under s. 125.07 (4) (bs) or (c) or 938.344 (2), (2b) or (2d), the suspension  
8 imposed shall be one of the following:

9 **SECTION 23.** 343.30 (6) (b) 1. and 2. of the statutes are amended to read:

10 343.30 (6) (b) 1. For a first violation, suspension for ~~30 to 90 days~~ not more than  
11 one year.

12 2. For a violation committed within 12 months of a previous violation,  
13 suspension for not ~~more~~ less than one year nor more than 18 months.

14 **SECTION 24.** 343.30 (6) (b) 3. of the statutes, as affected by 1997 Wisconsin Act  
15 84, is amended to read:

16 343.30 (6) (b) 3. For a violation committed within 12 months of 2 or more  
17 previous violations, suspension for not ~~more~~ less than 2 years nor more than 5 years.

18 **SECTION 25.** 343.301 of the statutes is created to read:

19 **343.301 Installation of ignition interlock device or immobilization of**  
20 **a motor vehicle. (1) IGNITION INTERLOCK.** (a) If a person is convicted of improperly  
21 refusing to take a test under s. 343.305 or violating s. 346.63 (1) or (2), 940.09 (1) or  
22 940.25, and the person has one or more prior suspensions, revocations or convictions  
23 that would be counted under s. 343.307 (1), the court may order that the person's  
24 operating privilege for the operation of "Class D" vehicles be restricted to operating  
25 "Class D" vehicles that are equipped with an ignition interlock device.

1 (b) The court may restrict the operating privilege restriction under par. (a) for  
2 a period of not less than one year nor more than the maximum operating privilege  
3 revocation period permitted under s. 343.31 (3) (c).

4 (c) If the court restricts the person's operating privilege under par. (a), the  
5 person shall be liable for the reasonable cost of equipping and maintaining any  
6 ignition interlock device installed in his or her motor vehicle.

7 (d) A person to whom a restriction under this subsection applies violates that  
8 restriction if he or she requests or permits another to blow into an ignition interlock  
9 device or to start a motor vehicle equipped with an ignition interlock device for the  
10 purpose of providing the person an operable motor vehicle without the necessity of  
11 first submitting a sample of his or her breath to analysis by the ignition interlock  
12 device.

13 (2) IMMOBILIZATION. (a) If a person is convicted of violating s. 346.63 (1) or (2),  
14 940.09 (1) or 940.25, and the person has one or more prior suspensions, revocations  
15 or convictions that would be counted under s. 343.307 (1), the court may order that  
16 the motor vehicle used during the violation and owned by the person be immobilized.

17 (b) The court may order the immobilization under par. (a) for a period of not less  
18 than one year nor more than the maximum operating privilege revocation period  
19 permitted under s. 343.31 (3) (c).

20 (c) If the court orders that the person's motor vehicle be immobilized, the person  
21 shall be liable for the reasonable cost of equipping and maintaining any  
22 immobilization device installed on his or her motor vehicle.

23 (d) The court shall notify the department, in a form and manner prescribed by  
24 the department, that an order to immobilize a motor vehicle has been entered. The  
25 registration records of the department shall reflect that the order has been entered

1 against the motor vehicle and remains unexecuted. Any law enforcement officer may  
2 execute that order based on the information provided by the department. The law  
3 enforcement agency shall notify the department when an order has been executed  
4 under this paragraph and the department shall amend its vehicle registration  
5 records to reflect that notification.

6 (e) Within 10 days after immobilizing a motor vehicle under par. (d), the law  
7 enforcement agency that immobilized the vehicle shall provide notice of the  
8 immobilization by certified mail to the owner of the motor vehicle and to all  
9 lienholders of record. The notice shall set forth the year, make, model and vehicle  
10 identification number of the motor vehicle, where the motor vehicle is located and  
11 the reason for the immobilization.

12 **SECTION 26.** 343.303 of the statutes is amended to read:

13 **343.303 Preliminary breath screening test.** If a law enforcement officer  
14 has probable cause to believe that the person is violating or has violated s. 346.63 (1),  
15 (2g) or (2m) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or  
16 940.25 or s. 940.09 where the offense involved the use of a vehicle, or if the officer  
17 detects any presence of alcohol, a controlled substance, controlled substance analog  
18 or other drug, or a combination thereof, on a person driving or operating or on duty  
19 time with respect to a commercial motor vehicle or has reason to believe that the  
20 person is violating or has violated s. 346.63 (7) or a local ordinance in conformity  
21 therewith, the officer, prior to an arrest, may request the person to provide a sample  
22 of his or her breath for a preliminary breath screening test using a device approved  
23 by the department for this purpose. The result of this preliminary breath screening  
24 test may be used by the law enforcement officer for the purpose of deciding whether  
25 or not the person shall be arrested for a violation of s. 346.63 (1), (2g), (2m), (5) or (7)

1 or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1) or  
2 940.25 and whether or not to require or request chemical tests as authorized under  
3 s. 343.305 (3). The result of the preliminary breath screening test shall not be  
4 admissible in any action or proceeding except to show probable cause for an arrest,  
5 if the arrest is challenged, or to prove that a chemical test was properly required or  
6 requested of a person under s. 343.305 (3). Following the screening test, additional  
7 tests may be required or requested of the driver under s. 343.305 (3). The general  
8 penalty provision under s. 939.61 (1) does not apply to a refusal to take a preliminary  
9 breath screening test.

10 **SECTION 27.** 343.305 (3) (a) of the statutes is amended to read:

11 343.305 (3) (a) Upon arrest of a person for violation of s. 346.63 (1), (2g), (2m)  
12 or (5) or a local ordinance in conformity therewith, or for a violation of s. 346.63 (2)  
13 or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, a law  
14 enforcement officer may request the person to provide one or more samples of his or  
15 her breath, blood or urine for the purpose specified under sub. (2). Compliance with  
16 a request for one type of sample does not bar a subsequent request for a different type  
17 of sample.

18 **SECTION 28.** 343.305 (3) (b) of the statutes is amended to read:

19 343.305 (3) (b) A person who is unconscious or otherwise not capable of  
20 withdrawing consent is presumed not to have withdrawn consent under this  
21 subsection, and if a law enforcement officer has probable cause to believe that the  
22 person has violated s. 346.63 (1), (2g), (2m) or (5) or a local ordinance in conformity  
23 therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the  
24 use of a vehicle, or detects any presence of alcohol, controlled substance, controlled  
25 substance analog or other drug, or a combination thereof, on a person driving or



1 operating or on duty time with respect to a commercial motor vehicle or has reason  
2 to believe the person has violated s. 346.63 (7), one or more samples specified in par.  
3 (a) or (am) may be administered to the person.

4 **SECTION 29.** 343.305 (5) (b) of the statutes is amended to read:

5 343.305 (5) (b) Blood may be withdrawn from the person arrested for violation  
6 of s. 346.63 (1), (2), (2g), (2m), (5) or (6) or 940.25, or s. 940.09 where the offense  
7 involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2g),  
8 (2m) or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity  
9 of alcohol, a controlled substance, a controlled substance analog or any other drug,  
10 or any combination of alcohol, controlled substance, controlled substance analog and  
11 any other drug in the blood only by a physician, registered nurse, medical  
12 technologist, physician assistant or person acting under the direction of a physician.

13 **SECTION 30.** 343.305 (9) (a) 1. of the statutes is amended to read:

14 343.305 (9) (a) 1. That prior to a request under sub. (3) (a), the officer had placed  
15 the person under arrest for a violation of s. 346.63 (1), (2g), (2m) or (5) or a local  
16 ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

17 **SECTION 31.** 343.305 (9) (a) 5. a. of the statutes is amended to read:

18 343.305 (9) (a) 5. a. Whether the officer had probable cause to believe the  
19 person was driving or operating a motor vehicle while under the influence of alcohol,  
20 a controlled substance or a controlled substance analog or any combination of  
21 alcohol, a controlled substance and a controlled substance analog, under the  
22 influence of any other drug to a degree which renders the person incapable of safely  
23 driving, or under the combined influence of alcohol and any other drug to a degree  
24 which renders the person incapable of safely driving or having a prohibited alcohol  
25 concentration or, if the person was driving or operating a commercial motor vehicle,

1 an alcohol concentration of 0.04 or more and whether the person was lawfully placed  
2 under arrest for violation of s. 346.63 (1), ~~(2g)~~, (2m) or (5) or a local ordinance in  
3 conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

4 **SECTION 32.** 343.305 (9) (d) of the statutes is amended to read:

5 343.305 (9) (d) At the close of the hearing, or within 5 days thereafter, the court  
6 shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined  
7 adversely to the person, the court shall proceed under sub. (10). If one or more of the  
8 issues is determined favorably to the person, the court shall order that no action be  
9 taken on the operating privilege on account of the person's refusal to take the test in  
10 question. This section does not preclude the prosecution of the person for violation  
11 of s. 346.63 (1), ~~(2g)~~, (2m), (5) or (7) or a local ordinance in conformity therewith, or  
12 s. 346.63 (2) or (6), 940.09 (1) or 940.25.

13 **SECTION 33.** 343.305 (10) (eg) of the statutes is created to read:

14 343.305 (10) (eg) One penalty for improperly refusing to submit to a test for  
15 intoxication regarding a person arrested for a violation of s. 346.63 (2g) or a local  
16 ordinance in conformity therewith is revocation of the person's operating privilege  
17 for 12 months. If there was a minor passenger under 16 years of age in the motor  
18 vehicle at the time of the incident that gave rise to the improper refusal, the  
19 revocation period is 24 months. After the first 15 days of the revocation period, the  
20 person is eligible for an occupational license under s. 343.10. Any such improper  
21 refusal or revocation for the refusal does not count as a prior refusal or a prior  
22 revocation under this section or s. 343.307. The person shall not be required to  
23 submit to and comply with any assessment or driver safety plan under pars. (c) and  
24 (d).

25 **SECTION 34.** 343.305 (10m) of the statutes is amended to read:

1           343.305 (10m) REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A  
2   MOTOR VEHICLE. If the person whose operating privilege is revoked under sub. (10)  
3   has ~~2~~ one or more prior convictions, suspensions or revocations, as counted under s.  
4   343.307 (1), the procedure under s. ~~346.65 (6)~~ 343.301 shall be followed ~~regarding if~~  
5   the court orders the immobilization or ~~seizure and forfeiture of a motor vehicle owned~~  
6   ~~by the person or the~~ equipping of a motor vehicle owned by the person with an  
7   ignition interlock device.

8           SECTION 35. 344.576 (2) (b) of the statutes is amended to read:

9           344.576 (2) (b) The damage occurs while the renter or authorized driver  
10   operates the private passenger vehicle in this state while under the influence of an  
11   intoxicant or other drug, as described under s. 346.63 (1) (a) or (b), (2g) or (2m).

12          SECTION 36. 346.63 (2g) of the statutes is created to read:

13          346.63 (2g) (a) No person who has 3 or more prior suspensions, revocations of  
14   convictions that would be counted under s. 343.307 (1) may drive or operate a motor  
15   vehicle while he or she has an alcohol concentration of more than 0.0 but less than  
16   0.08. Upon convicting a person of violating this subsection, the court may suspend  
17   the person's operating privilege under s. 343.30 (1p) (b). The person is eligible for an  
18   occupational license under s. 343.10 at any time. If a person arrested for a violation  
19   of this subsection refuses to take a test under s. 343.305, the refusal is a separate  
20   violation and the person is subject to revocation of the person's operating privilege  
21   under s. 343.305 (10) (eg). The clerk of the court in which the conviction occurred  
22   shall forward the record of conviction under this paragraph to the department. Upon  
23   receiving a record of conviction under this paragraph, the department shall  
24   immediately provide notice of the conviction to the provider that is administering the  
25   violator's driver safety plan.

1 (b) Notwithstanding s. 349.02, a law enforcement officer may not stop or  
2 inspect a vehicle solely to determine compliance with this subsection or a local  
3 ordinance in conformity with this subsection, or rules of the department. This  
4 paragraph does not limit the authority of a law enforcement officer to issue a citation  
5 for a violation of this subsection or a local ordinance in conformity with this  
6 subsection, or rules of the department, observed in the course of a stop or inspection  
7 made for other purposes.

8 **SECTION 37.** 346.63 (2m) of the statutes is amended to read:

9 346.63 (2m) If a person has not attained the legal drinking age, as defined in  
10 s. 125.02 (8m), the person may not drive or operate a motor vehicle while he or she  
11 has an alcohol concentration of more than 0.0 but not more than 0.1. One penalty  
12 for violation of this subsection is suspension of a person's operating privilege under  
13 s. 343.30 (1p) (a). The person is eligible for an occupational license under s. 343.10  
14 at any time. If a person arrested for a violation of this subsection refuses to take a  
15 test under s. 343.305, the refusal is a separate violation and the person is subject to  
16 revocation of the person's operating privilege under s. 343.305 (10) (em).

17 **SECTION 38.** 346.65 (2) (b) of the statutes is amended to read:

18 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$300  
19 nor more than ~~\$1,000~~ \$2,000 and imprisoned for not less than 5 days nor more than  
20 6 months if the total number of suspensions, revocations and convictions counted  
21 under s. 343.307 (1) equals 2 within a 10-year period. Suspensions, revocations or  
22 convictions arising out of the same incident or occurrence shall be counted as one.

23 **SECTION 39.** 346.65 (2) (c) of the statutes is amended to read:

24 346.65 (2) (c) Except as provided in par. (f), shall be fined not less than \$600  
25 nor more than ~~\$2,000~~ \$3,000 and imprisoned for not less than 30 days nor more than

1 one year in the county jail if the total number of suspensions, revocations and  
2 convictions counted under s. 343.307 (1) equals 3, except that suspensions,  
3 revocations or convictions arising out of the same incident or occurrence shall be  
4 counted as one.

5 **SECTION 40.** 346.65 (2) (d) of the statutes is amended to read:

6 346.65 (2) (d) Except as provided in par. (f), shall be fined not less than \$600  
7 nor more than ~~\$2,000~~ \$4,000 and imprisoned for not less than 60 days nor more than  
8 one year in the county jail if the total number of suspensions, revocations and  
9 convictions counted under s. 343.307 (1) equals 4, except that suspensions,  
10 revocations or convictions arising out of the same incident or occurrence shall be  
11 counted as one.

12 **SECTION 41.** 346.65 (2) (e) of the statutes is amended to read:

13 346.65 (2) (e) Except as provided in par (f), shall be fined not less than \$600 nor  
14 more than ~~\$2,000~~ \$5,000 and imprisoned for not less than 6 months nor more than  
15 5 years if the total number of suspensions, revocations and convictions counted  
16 under s. 343.307 (1) equals 5 or more, except that suspensions, revocations or  
17 convictions arising out of the same incident or occurrence shall be counted as one.

18 **SECTION 42.** 346.65 (2g) (a) of the statutes is amended to read:

19 346.65 (2g) (a) In addition to the authority of the court under s. 973.05 (3) (a)  
20 to provide that a defendant perform community service work for a public agency or  
21 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.  
22 (2) (b) to (f) and except as provided in par. (ag), the court may provide that a defendant  
23 perform community service work for a public agency or a nonprofit charitable  
24 organization in lieu of part or all of a forfeiture under sub. (2) (a) or may require a  
25 person who is subject to sub. (2) to perform community service work for a public

1 agency or a nonprofit charitable organization in addition to the penalties specified  
2 under sub. (2).

3 (am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or (ag) may only  
4 apply if agreed to by the organization or agency. The court shall ensure that the  
5 defendant is provided a written statement of the terms of the community service  
6 order and that the community service order is monitored. Any organization or  
7 agency acting in good faith to which a defendant is assigned pursuant to an order  
8 under this subsection has immunity from any civil liability in excess of \$25,000 for  
9 acts or omissions by or impacting on the defendant. The issuance or possibility of the  
10 issuance of a community service order under this subsection does not entitle an  
11 indigent defendant who is subject to sub. (2) (a) to representation by counsel under  
12 ch. 977.

13 **SECTION 43.** 346.65 (2g) (ag) of the statutes is created to read:

14 346.65 (2g) (ag) If the court determines that a person does not have the ability  
15 to pay a fine imposed under sub. (2) (b) to (f), the court shall require the defendant  
16 to perform community service work for a public agency or a nonprofit charitable  
17 organization in lieu of paying the fine imposed or, if the amount of the fine was  
18 reduced under sub. (2e), in lieu of paying the remaining amount of the fine. Each  
19 hour of community service performed in compliance with an order under this  
20 paragraph shall reduce the amount of the fine owed by an amount determined by the  
21 court.

22 **SECTION 44.** 346.65 (2g) (b) of the statutes is amended to read:

23 346.65 (2g) (b) The court may require a person ordered to perform community  
24 service work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine  
25 resulted from violating s. 346.63 (2), 940.09 (1) or 940.25, to participate in community

1 service work that demonstrates the adverse effects of substance abuse or of operating  
2 a vehicle while under the influence of an intoxicant or other drug, including working  
3 at an alcoholism treatment facility approved under s. 51.45, an emergency room of  
4 a general hospital or a driver awareness program under s. 346.637. The court may  
5 order the person to pay a reasonable fee, based on the person's ability to pay, to offset  
6 the cost of establishing, maintaining and monitoring the community service work  
7 ordered under this paragraph. If the opportunities available to perform community  
8 service work are fewer in number than the number of defendants eligible under this  
9 subsection, the court shall, when making an order under this paragraph, give  
10 preference to defendants who were under 21 years of age at the time of the offense.  
11 All provisions of par. ~~(a)~~ (am) apply to any community service work ordered under  
12 this paragraph.

13 **SECTION 45.** 346.65 (2g) (c) of the statutes is amended to read:

14 346.65 (2g) (c) If there was a minor passenger under 16 years of age in the  
15 motor vehicle or commercial motor vehicle at the time of the violation that gave rise  
16 to the conviction, the court may require a person ordered to perform community  
17 service work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine  
18 resulted from violating s. 346.63 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, to  
19 participate in community service work that benefits children or that demonstrates  
20 the adverse effects on children of substance abuse or of operating a vehicle while  
21 under the influence of an intoxicant or other drug. The court may order the person  
22 to pay a reasonable fee, based on the person's ability to pay, to offset the cost of  
23 establishing, maintaining and monitoring the community service work ordered  
24 under this paragraph.

25 **SECTION 46.** 346.65 (2m) (b) of the statutes is amended to read:

1           346.65 (2m) (b) The court shall consider a report submitted under s. 85.53 (2)  
2           (d) when imposing a sentence under sub. (2), (2n), (2q) or (3m).

3           **SECTION 47.** 346.65 (2n) of the statutes is created to read:

4           346.65 (2n) Any person violating s. 346.63 (2g) shall forfeit not more than \$250.  
5           If there was a minor passenger under 16 years of age in the motor vehicle at the time  
6           of the violation that gave rise to the conviction under s. 346.63 (2g), the forfeiture is  
7           doubled.

8           **SECTION 48.** 346.65 (6) (a) 1. of the statutes is amended to read:

9           346.65 (6) (a) 1. ~~Except as provided in this paragraph, the~~ The court may order  
10          a law enforcement officer to seize a the motor vehicle, ~~or, if the motor vehicle is not~~  
11          ~~ordered seized, shall order a law enforcement officer to equip the motor vehicle with~~  
12          ~~an ignition interlock device or immobilize any motor vehicle~~ used during the  
13          violation and owned by the person ~~whose operating privilege is revoked under s.~~  
14          ~~343.305 (10) or who committed a violation of s. 346.63 (1) (a), or (b) or (2) (a) 1. or 2.,~~  
15          940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d) if the person ~~whose operating~~  
16          ~~privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 2~~  
17          or more prior suspensions, revocations or convictions that would be counted under  
18          s. 343.307 (1). ~~The court shall not order a motor vehicle equipped with an ignition~~  
19          ~~interlock device or immobilized if that would result in undue hardship or extreme~~  
20          ~~inconvenience or would endanger the health and safety of a person.~~

21          **SECTION 49.** 346.65 (6) (a) 2. of the statutes is repealed.

22          **SECTION 50.** 346.65 (6) (a) 2m. of the statutes is amended to read:

23          346.65 (6) (a) 2m. A person who owns a motor vehicle subject to seizure,  
24          ~~equipping with an ignition interlock device or immobilization~~ under this paragraph  
25          shall surrender to the clerk of circuit court the certificate of title issued under ch. 342



1 for every ~~the~~ motor vehicle owned by the person that is subject to seizure. The person  
2 shall comply with this subdivision within 5 working days after receiving notification  
3 of this requirement from the district attorney. When a district attorney receives a  
4 copy of a notice of intent to revoke the operating privilege under s. 343.305 (9) (a) of  
5 a person who has 2 or more prior convictions, suspensions or revocations, as counted  
6 under s. 343.307 (1), or when a district attorney notifies the department of the filing  
7 of a criminal complaint against a person under s. 342.12 (4) (a), the district attorney  
8 shall notify the person of the requirement to surrender ~~all certificates~~ the certificate  
9 of title to the clerk of circuit court. The notification shall include the time limits for  
10 that surrender, the penalty for failure to comply with the requirement and the  
11 address of the clerk of circuit court. The clerk of circuit court shall promptly return  
12 each the certificate of title surrendered to the clerk of circuit court under this  
13 subdivision after stamping the certificate of title with the notation "Per section  
14 346.65 (6) of the Wisconsin statutes, ownership of this motor vehicle may not be  
15 transferred without prior court approval". Any person failing to surrender a  
16 certificate of title as required under this subdivision shall forfeit not more than \$500.

17 SECTION 51. 346.65 (6) (a) 3. of the statutes is amended to read:

18 346.65 (6) (a) 3. The court shall notify the department, in a form and manner  
19 prescribed by the department, that an order to ~~equip a motor vehicle with an ignition~~  
20 ~~interlock device, to immobilize a motor vehicle or to seize a motor vehicle~~ has been  
21 entered. The registration records of the department shall reflect that the order has  
22 been entered against the vehicle and remains unexecuted. Any law enforcement  
23 officer may execute that order and shall transfer any motor vehicle ordered seized  
24 to the law enforcement agency that was originally ordered to seize the vehicle based  
25 on the information provided by the department. The law enforcement agency shall

1 notify the department when an order has been executed under this subdivision and  
2 the department shall amend its vehicle registration records to reflect that  
3 notification.

4 **SECTION 52.** 346.65 (6) (b) of the statutes is amended to read:

5 346.65 (6) (b) Within 10 days after seizing ~~or immobilizing~~ a motor vehicle  
6 under par. (a), the law enforcement agency that seized ~~or immobilized~~ the vehicle  
7 shall provide notice of the seizure ~~or immobilization~~ by certified mail to the owner  
8 of the motor vehicle and to all lienholders of record. The notice shall set forth the  
9 year, make, model and serial number of the motor vehicle, where the motor vehicle  
10 is located, the reason for the seizure ~~or immobilization~~, and the forfeiture procedure  
11 if the vehicle was seized. When a motor vehicle is seized under this section, the law  
12 enforcement agency that seized the vehicle shall place the motor vehicle in a secure  
13 place subject to the order of the court.

14 **SECTION 53.** 346.65 (6) (c) of the statutes is amended to read:

15 346.65 (6) (c) The district attorney of the county where the motor vehicle was  
16 seized, or where the owner was convicted of the violation under s. 346.63 (1) (a) or  
17 (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d), shall  
18 commence an action to forfeit the motor vehicle within 30 days after the motor vehicle  
19 is seized. The action shall name the owner of the motor vehicle and all lienholders  
20 of record as parties. The forfeiture action shall be commenced by filing a summons,  
21 complaint and affidavit of the law enforcement agency with the clerk of circuit court.  
22 Upon service of an answer, the action shall be set for hearing within 60 days after  
23 the service of the answer. If no answer is served or no issue of law or fact joined and  
24 the time for that service or joining of issues has expired, the court may render a  
25 default judgment as provided in s. 806.02.

1           **SECTION 54.** 346.65 (6) (d) of the statutes is amended to read:

2           346.65 (6) (d) At the hearing set under par. (c), the state has the burden of  
3           proving to a reasonable certainty by the greater weight of the credible evidence that  
4           the motor vehicle is a motor vehicle owned by a person who committed a violation of  
5           s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a),  
6           (b), (c) or (d) and, ~~if the seizure is under par. (a) 1.,~~ that the person had 2 or more prior  
7           convictions, suspensions or revocations, as counted under s. 343.307 (1) ~~or, if the~~  
8           ~~seizure is under par. (a) 2., 3 or more prior convictions, suspensions or revocations,~~  
9           ~~as counted under s. 343.307 (1).~~ If the, (c) or (d), (c) or (d) state fails to meet the  
10          burden of proof required under this paragraph, the motor vehicle shall be returned  
11          to the owner upon the payment of storage costs.

12          **SECTION 55.** 346.655 (1) of the statutes is amended to read:

13          346.655 (1) ~~On or after July 1, 1988, if~~ If a court imposes a fine or a forfeiture  
14          for a violation of s. 346.63 (1) or (5), or a local ordinance in conformity therewith, or  
15          s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a  
16          vehicle, it shall impose a driver improvement surcharge in an amount of \$340 \$345  
17          in addition to the fine or forfeiture, penalty assessment, jail assessment and crime  
18          laboratories and drug law enforcement assessment.

19          **SECTION 56.** 346.655 (2) (a) of the statutes is amended to read:

20          346.655 (2) (a) Except as provided in par. (b), the clerk of court shall collect and  
21          transmit the amount under sub. (1) to the county treasurer as provided in s. 59.40  
22          (2) (m). The county treasurer shall then make payment of ~~37.6%~~ 38.5% of the amount  
23          to the state treasurer as provided in s. 59.25 (3) (f) 2.

24          **SECTION 57.** 346.655 (2) (b) of the statutes is amended to read:

1           346.655 (2) (b) If the forfeiture is imposed by a municipal court, the court shall  
2           transmit the amount to the treasurer of the county, city, town or village, and that  
3           treasurer shall make payment of ~~37.6%~~ 38.5% of the amount to the state treasurer  
4           as provided in s. 66.12 (1) (b). The treasurer of the city, town or village shall transmit  
5           the remaining ~~62.4%~~ 61.5% of the amount to the treasurer of the county.

6           **SECTION 58.** 346.93 (2f) of the statutes is created to read:

7           346.93 (2f) Except as provided in sub. (2g), any person violating this section  
8           may have his or her operating privilege suspended under s. 343.30 (6) (b) 1.

9           **SECTION 59.** 346.93 (2g) of the statutes is created to read:

10          346.93 (2g) Any person violating this section may be required to forfeit not less  
11          than \$20 nor more than \$400 and shall have his or her operating privilege:

12          (b) For a violation committed within 12 months of a previous violation,  
13          suspended under s. 343.30 (6) (b) 2.

14          (c) For a violation committed within 12 months of 2 or more previous violations,  
15          suspended under s. 343.30 (6) (b) 3.

16          **SECTION 60.** 346.95 (2) of the statutes is amended to read:

17          346.95 (2) Any person violating s. 346.89 (1), ~~346.93~~ or 346.94 (2), (4) or (7) may  
18          be required to forfeit not less than \$20 nor more than \$400.

19          **SECTION 61.** 347.413 (1) of the statutes is amended to read:

20          347.413 (1) No person may remove, disconnect, tamper with or otherwise  
21          circumvent the operation of an ignition interlock device installed in response to the  
22          court order under s. ~~346.65 (6)~~ 343.301 (1). This subsection does not apply to the  
23          removal of an ignition interlock device upon the expiration of the order requiring the  
24          motor vehicle to be so equipped or to necessary repairs to a malfunctioning ignition  
25          interlock device by a person authorized by the department.

1       **SECTION 62.** 347.413 (2) of the statutes is repealed.

2       **SECTION 63.** 347.413 (3) of the statutes is amended to read:

3       347.413 (3) The department shall design a warning label which shall be affixed  
4 to each ignition interlock device upon installation. The label shall provide notice of  
5 the penalties for tampering with or circumventing the operation of the ignition  
6 interlock device under sub. (1) and ~~s. 343.10 (5) (a) 3.~~

7       **SECTION 64.** 347.417 (1) of the statutes is amended to read:

8       347.417 (1) No person may remove, disconnect, tamper with or otherwise  
9 circumvent the operation of any immobilization device installed in response to a  
10 court order under s. ~~346.65 (6)~~ 343.301 (2). This subsection does not apply to the  
11 removal of an immobilization device pursuant to a court order or to necessary repairs  
12 to a malfunctioning immobilization device.

13       **SECTION 65.** 347.417 (2) of the statutes is amended to read:

14       347.417 (2) The department shall design a warning label which shall be affixed  
15 by the owner of each immobilization device before the device is used to immobilize  
16 any motor vehicle under s. ~~346.65 (6)~~ 343.301 (2). The label shall provide notice of  
17 the penalties for removing, disconnecting, tampering with or otherwise  
18 circumventing the operation of the immobilization device.

19       **SECTION 66.** 349.03 (2m) of the statutes is amended to read:

20       349.03 (2m) Notwithstanding sub. (2), a municipal court may suspend a license  
21 for a violation of a local ordinance in conformity with s. 346.63 (1), (2g) or (2m).

22       **SECTION 67.** 349.06 (1m) of the statutes is amended to read:

23       349.06 (1m) Notwithstanding sub. (1), a municipal court may suspend a license  
24 for a violation of a local ordinance in conformity with s. 346.63 (1), (2g) or (2m).

25       **SECTION 68.** 800.03 (4) of the statutes is repealed.

1           **SECTION 69.** 885.235 (1m) of the statutes is amended to read:

2           885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2g),  
3           (2m) or (7) or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood  
4           at the time in question, as shown by chemical analysis of a sample of the person's  
5           blood or urine or evidence of the amount of alcohol in the person's breath, is  
6           admissible on the issue of whether he or she had an alcohol concentration in the  
7           range specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2g) or (2m) or 350.101  
8           (1) (c) or an alcohol concentration above 0.0 under s. 346.63 (7) if the sample was  
9           taken within 3 hours after the event to be proved. The fact that the analysis shows  
10          that the person had an alcohol concentration of more than 0.0 but not more than 0.1  
11          is prima facie evidence that the person had an alcohol concentration in the range  
12          specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2g) or (2m) or 350.101 (1) (c)  
13          or an alcohol concentration above 0.0 under s. 346.63 (7).

14          **SECTION 70.** 885.235 (4) of the statutes is amended to read:

15          885.235 (4) The provisions of this section relating to the admissibility of  
16          chemical tests for alcohol concentration or intoxication shall not be construed as  
17          limiting the introduction of any other competent evidence bearing on the question  
18          of whether or not a person was under the influence of an intoxicant, had a specified  
19          alcohol concentration or had an alcohol concentration in the range specified in s.  
20          23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2g) or (2m) or 350.101 (1) (c).

21          **SECTION 71.** 938.344 (2) (intro.) of the statutes is amended to read:

22          938.344 (2) (intro.) If a court finds a juvenile committed a violation under s.  
23          ~~125.07 (4) (b) or~~ 125.09 (2), or a local ordinance that strictly conforms to ~~one of these~~  
24          ~~statutes~~ that statute, the court shall order one or any combination of the following  
25          penalties:

1           **SECTION 72.** 938.344 (2b) (intro.) and (b) of the statutes are amended to read:

2           938.344 (2b) (intro.) If a court finds a juvenile committed a violation under s.  
3           125.07 (4) (a) or (b), or a local ordinance which strictly conforms to s. 125.07 (4) (a)  
4           or (b), the court shall order one or any combination of the following penalties:

5           (b) For a violation committed within 12 months of a previous violation, a  
6           forfeiture of not less than \$300 nor more than \$500, ~~suspension of the juvenile's~~  
7           ~~operating privilege as provided under s. 343.30 (6) (b) 2.~~ or the juvenile's  
8           participation in a supervised work program or other community service work under  
9           s. 938.34 (5g). In addition to any penalty imposed under this paragraph, the court  
10          shall suspend the juvenile's operating privilege as provided in s. 343.30 (6) (b) 2.

11          **SECTION 73.** 938.344 (2b) (c) of the statutes, as affected by 1997 Wisconsin Act  
12          84, is amended to read:

13          938.344 (2b) (c) For a violation committed within 12 months of 2 or more  
14          previous violations, a forfeiture of \$500, ~~suspension of the juvenile's operating~~  
15          ~~privilege as provided under s. 343.30 (6) (b) 3.~~ or the juvenile's participation in a  
16          supervised work program or other community service work under s. 938.34 (5g). In  
17          addition to any penalty imposed under this paragraph, the court shall suspend the  
18          juvenile's operating privilege as provided in s. 343.30 (6) (b) 3.

19          938.344 (2d) (c) For a violation committed within 12 months of 2 or more  
20          previous violations, a forfeiture of \$500, ~~revocation~~ suspension of the juvenile's  
21          operating privilege as provided under s. 343.30 (6) (b) 3. or the juvenile's  
22          participation in a supervised work program or other community service work under  
23          s. 938.34 (5g).

24          **SECTION 74.** 940.09 (1d) of the statutes is renumbered 940.09 (1d) (b) and  
25          amended to read:

1           940.09 (1d) (b) If the person who committed an offense under sub. (1) (a), (b),  
2           (c) or (d) has 2 or more prior convictions, suspensions or revocations, as counted  
3           under s. 343.307 (1), the procedure under s. 346.65 (6) ~~may~~ shall be followed  
4           ~~regarding the immobilization or if the court orders the~~ seizure and forfeiture of a  
5           motor vehicle owned by the person who committed the offense ~~or the equipping of a~~  
6           ~~motor vehicle owned by the person with an ignition interlock device.~~

7           **SECTION 75.** 940.09 (1d) (a) of the statutes is created to read:

8           940.09 (1d) (a) If a person who committed an offense under sub. (1) (a), (b), (c)  
9           or (d) has one or more convictions, suspensions or revocations, as counted under s.  
10          343.307 (1), the procedure under s. 343.301 shall be followed if the court orders the  
11          equipping of a motor vehicle owned by the person with an ignition interlock device  
12          or the immobilization of the motor vehicle.

13          **SECTION 76.** 940.25 (1d) of the statutes is renumbered 940.25 (1d) (b) and  
14          amended to read:

15          940.25 (1d) (b) If the person who committed the offense under sub. (1) (a), (b),  
16          (c) or (d) has 2 or more prior convictions, suspensions or revocations, as counted  
17          under s. 343.307 (1), the procedure under s. 346.65 (6) ~~may~~ shall be followed  
18          ~~regarding the immobilization or if the court orders the~~ seizure and forfeiture of a  
19          motor vehicle owned by the person who committed the offense ~~or the equipping of a~~  
20          ~~motor vehicle owned by the person with an ignition interlock device.~~

21          **SECTION 77.** 940.25 (1d) (a) of the statutes is created to read:

22          940.25 (1d) (a) If a person who committed an offense under sub. (1) (a), (b), (c)  
23          or (d) has one or more prior convictions, suspensions or revocations, as counted under  
24          s. 343.307 (1), the procedure under s. 343.301 shall be followed if the court orders the



1 the equipping of a motor vehicle owned by the person with an ignition interlock  
2 device or the immobilization of the motor vehicle.

3 **SECTION 78. Nonstatutory provisions.**

4 (1) The departments of corrections, health and family services and  
5 transportation shall jointly study and evaluate the desirability of using treatment  
6 programs and other alternatives to incarceration as a way to reduce the length of  
7 incarceration or the need for incarceration of persons convicted of a 2nd or  
8 subsequent violation of operating a motor vehicle while under the influence on an  
9 intoxicant, controlled substance or other drug. The departments shall consult with  
10 the counties regarding this study and evaluation. No later than the first day of the  
11 9th month beginning after the effective date of this subsection, the departments shall  
12 jointly submit a report to the legislature in the manner provided under section  
13 13.172 (2) of the statutes that contains the conclusions of the departments' study and  
14 evaluation and any recommendations concerning implementation of the  
15 conclusions.

16 (2) The department of transportation, and the department of health and family  
17 services shall study jointly and evaluate the effectiveness of using ignition interlock  
18 devices and vehicle immobilization as methods of reducing the prevalence of drunk  
19 driving and the recidivism of drunk-driving offenders. The departments shall  
20 consult with the counties, law enforcement agencies, the courts and the providers of  
21 services to alcohol abusers regarding this study and evaluation. No later than the  
22 first day of the 24th month beginning after the effective date of section 343.301 of the  
23 statutes, as created in this act, the department shall submit a report to the  
24 legislature in the manner provided under section 13.172 (2) of the statutes that

**SECTION 80. Appropriation changes.**

(1) **PRETRIAL INTOXICATED DRIVER INTERVENTION GRANTS.** In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of transportation under section 20.395 (5) (jr) of the statutes, as affected by the acts of 1999, the dollar amount is increased by \$314,700 for fiscal year 2000–01 to provide additional funding for grants under the pretrial intoxicated driver intervention grant program.

**SECTION 81. Effective dates.** This act takes effect on January 1, 2001, except as follows:

(1) The treatment of section 110.10 (10) of the statutes takes effect on October 1, 2000.

(2) The treatment of sections 343.10 (5) (a) 3. and (b), 343.301, 343.305 (10m), 346.65 (6) (a) 1., 2., 2m. and 3., (b) and (d), 347.413 (1), (2) and (3), 347.417 (1) and (2), 940.09 (1d) (a) and (b) and 940.25 (1d) (a) and (b) of the statutes takes effect on January 1, 2002.

(3) The treatment of section 346.65 (6) (c) of the statutes takes effect on the first day of the 2nd month beginning after publication.

**(END)**

Want 3/2 noon, if possible

1999 - 2000 LEGISLATURE

LRBs0372/P1

RPN, PEN & JED:Kj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
SENATE SUBSTITUTE AMENDMENT,  
TO 1999 SENATE BILL 125

1

*Gen. Cat.*  
AN ACT ...; relating to: ??

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2

(END)





State of Wisconsin  
1999 - 2000 LEGISLATURE

50772/P1  
LRB-42371  
RPN/PEN/JEO:kmg:ch

**ENGROSSED 1999 ASSEMBLY BILL 221**

May 27, 1999 - Printed by direction of SENATE CHIEF CLERK.

check with  
sections affected

reger

1 **AN ACT** *to repeal* 346.65 (6) (a) 2. and 800.03 (4); *to renumber* 343.305 (10m),  
2 940.09 (1d) and 940.25 (1d); *to renumber and amend* 346.65 (6) (a) 1.; *to*  
3 *amend* 20.435 (6) (hx), 85.53 (3), 125.07 (4) (bs) (intro.), 2., 3. and 4., 125.07 (4)  
4 (c) (intro.), 2., 3. and 4., 125.07 (4) (e) 2. (intro.), 340.01 (46m) (b), 342.12 (4) (a),  
5 342.12 (4) (c) 1. (intro.), 343.10 (5) (a) 3., 343.30 (6) (b), 346.65 (2) (b), 346.65 (2)  
6 (c), 346.65 (2) (d), 346.65 (2) (e), 346.65 (2e), 346.65 (2g) (a), 346.65 (2g) (b),  
7 346.65 (2g) (c), 346.65 (6) (a) 2m., 346.65 (6) (c), 346.65 (6) (d), 346.655 (1),  
8 346.655 (2) (a), 346.655 (2) (b), 346.95 (2), 938.344 (2) (intro.), 938.344 (2) (c),  
9 938.344 (2b) (intro.), (b) and (c) and 938.344 (2d) (c); *to create* 20.395 (5) (ek),  
10 51.30 (4) (b) 25., 85.55, 110.10, 303.065 (2m), 303.08 (1) (cg), 303.08 (1) (cm),  
11 303.08 (10m), 340.01 (46m) (c), 343.305 (10m) (a), 346.65 (2) (g), 346.65 (2g) (ag),  
12 346.65 (6) (a) 1d., 346.93 (2f), 346.93 (2g), 940.09 (1d) (a), 940.25 (1c) and 940.25  
13 (1d) (a) of the statutes; and *to affect* 1997 Wisconsin Act 84, section 2, 1997  
14 Wisconsin Act 84, section 3, 1997 Wisconsin Act 84, section 4, 1997 Wisconsin

**ENGROSSED ASSEMBLY BILL 221**

1 Act 84, section 5, 1997 Wisconsin Act 84, section 30, 1997 Wisconsin Act 84,  
2 section 31, 1997 Wisconsin Act 84, section 160, 1997 Wisconsin Act 84, section  
3 161 and 1997 Wisconsin Act 84, section 162; relating to: operating a motor  
4 vehicle while under the influence of an intoxicant or drugs, or both; installation  
5 of an ignition interlock device in cases involving intoxicated operation of a  
6 motor vehicle; seizure of motor vehicles for offenses related to driving while  
7 under the influence of an intoxicant; the prohibited alcohol concentration  
8 related to operating a motor vehicle while under the influence of an intoxicant;  
9 restrictions on prisoner release from jail or prison; creating a safe-ride grant  
10 program; creating an ignition interlock device program; pretrial intoxicated  
11 driver intervention grants; requiring a report on incarceration alternatives;  
12 *and ignition interlock devices* certain alcohol beverage offenses committed by persons under the legal  
13 drinking age; granting rule-making authority; making appropriations; and  
14 providing penalties.

***Analysis by the Legislative Reference Bureau******Engrossment information:***

The text of Engrossed 1999 Assembly Bill 221 consists of the following documents adopted in the assembly on May 19, 1999: Assembly Substitute Amendment 2, as affected by Assembly Amendment 1.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

15 **SECTION 1.** 20.395 (5) (ek) of the statutes is created to read:

16 20.395 (5) (ek) *Safe-ride grant program; state funds.* From the general fund,  
17 all moneys transferred from the appropriation account under s. 20.435 (6) (hx) for the  
18 purpose of awarding grants under s. 85.55.

**ENGROSSED ASSEMBLY BILL 221**

**SECTION 2.** 20.435 (6) (hx) of the statutes is amended to read:

20.435 (6) (hx) *Services related to drivers, receipts.* The amounts in the schedule for services related to drivers. All moneys received by the state treasurer from the driver improvement surcharge on court fines and forfeitures authorized under s. 346.655 shall be credited to this appropriation. The secretary of administration shall annually transfer to the appropriation account under s. 20.395 (5) (di) ~~31.29%~~ 30.12% of all moneys credited to this appropriation. The secretary of administration shall annually transfer to the appropriation account under s. 20.395 (5) (ek) 3.76% of all moneys credited to this appropriation. The moneys remaining may be transferred to sub. (7) (hy) and ss. 20.255 (1) (hm), 20.285 (1) (ia), 20.395 (5) (ci) and 20.455 (5) (h) by the secretary of administration after consultation with the secretaries of health and family services and transportation, the superintendent of public instruction, the attorney general and the president of the university of Wisconsin system.

**SECTION 3.** 51.30 (4) (b) 25. of the statutes is created to read:

51.30 (4) (b) 25. To the department of corrections or to a sheriff, to determine if a person incarcerated is complying with the assessment or the driver safety plan ordered under s. 343.30 (1q) (c).

**SECTION 5.** 85.53 (3) of the statutes is amended to read:

~~85.53 (3) Grants under this section shall be paid from the appropriation under s. 20.395 (5) (jr). The amount of a grant may not exceed 80% of the amount expended by an eligible applicant for services related to the program. The total amount of grants awarded under this section may not exceed \$500,000.~~

**SECTION 6.** 85.55 of the statutes is created to read:

## ENGROSSED ASSEMBLY BILL 221

1        **85.55 Safe-ride grant program.** The department may award grants to any  
2        county or municipality <sup>to</sup> ~~to~~ <sup>for any nonprofit corporation, as defined in s. 46-93 (lm) (c),</sup> to cover the costs of transporting persons suspected of having  
3        a prohibited alcohol concentration, as defined in s. 340.01 (46m), from any premises  
4        licensed under ch. 125 to sell alcohol beverages to their places of residence. The <sup>(lm)</sup>  
5        amount of a grant under this section may not exceed 50% of the costs necessary to  
6        provide the service. The liability of a provider of a safe-ride program to persons  
7        transported under the program is limited to the amounts required for an automobile  
8        liability policy under s. 344.15 (1). Grants awarded under this section shall be paid  
9        from the appropriation under s. 20.395 (5) (ek).

10        **SECTION 7.** 110.10 of the statutes is created to read:

11        **110.10 Ignition interlock device program.** The department shall  
12        promulgate rules providing for the implementation of <sup>an</sup> ~~statewide~~ ignition interlock  
13        device program. <sup>that will be conveniently available to persons throughout this state</sup> The rules shall include provisions regarding all of following:

14            (1) The selection of persons to install, service and remove ignition interlock  
15        devices from motor vehicles.

16            (2) The periodic review of the fees charged to the owner of a vehicle for the  
17        installation, service and removal of an ignition interlock device.

18            (3) Requiring ignition interlock device providers operating in this state to  
19        establish pilot programs involving the voluntary use of ignition interlock devices.

20            (4) Requiring ignition interlock device providers operating in this state to  
21        provide the department and law enforcement agencies designated by the department  
22        with installation, service, tampering and failure reports in a timely manner.

23        **SECTION 8m.** 125.07 (4) (bs) (intro.) <sup>2. ~~11~~</sup> and <sup>4. ~~11~~</sup> of the statutes are amended  
24        to read: <sup>Thaw</sup>

## ENGROSSED ASSEMBLY BILL 221

1       125.07 (4) (bs) (intro.) Any person violating par. (a) is subject to the following  
2       penalties shall be penalized as follows:

3       2. For a violation committed within 12 months of a previous violation, the  
4       person's operating privilege shall be suspended under s. 343.30 (6) (b) 2. In addition,  
5       the person is subject to either a forfeiture of not less than \$300 nor more than \$500,  
6       suspension of the person's operating privilege as provided under s. 343.30 (6) (b) 2.,  
7       participation in a supervised work program or other community service work under  
8       par. (cg) or any combination of these penalties.

9       3. For a violation committed within 12 months of 2 previous violations, the  
10       person's operating privilege shall be suspended under s. 343.30 (6) (b) 3. In addition,  
11       the person is subject to either a forfeiture of not less than \$500 nor more than \$750,  
12       revocation of the person's operating privilege under s. 343.30 (6) (b) 3., participation  
13       in a supervised work program or other community service work under par. (cg) or any  
14       combination of these penalties.

15       4. For a violation committed within 12 months of 3 or more previous violations,  
16       the person's operating privilege shall be suspended under s. 343.30 (6) (b) 3. In  
17       addition, the person is subject to either a forfeiture of not less than \$750 nor more  
18       than \$1,000, revocation of the person's operating privilege under s. 343.30 (6) (b) 3.,  
19       participation in a supervised work program or other community service work under  
20       par. (cg) or any combination of these penalties.

new  
insert  
5-21

21       SECTION 9m. 125.07 (4) (c) (intro.) ~~2. 3. and 4.~~ of the statutes are amended to  
22       read:

23       125.07 (4) (c) (intro.) Any person violating par. (b) is subject to the following  
24       penalties shall be penalized as follows:



## ENGROSSED ASSEMBLY BILL 221

2. For a violation committed within 12 months of a previous violation, the person's operating privilege shall be suspended under s. 343.30 (6) (b) 2. In addition, the person is subject to either a forfeiture of not less than \$200 nor more than \$300, suspension of the person's operating privilege as provided under s. 343.30 (6) (b) 2., participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties.

3. For a violation committed within 12 months of 2 previous violations, the person's operating privilege shall be suspended under s. 343.30 (6) (b) 3. In addition, the person is subject to either a forfeiture of not less than \$300 nor more than \$500, revocation of the person's operating privilege under s. 343.30 (6) (b) 3., participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties.

4. For a violation committed within 12 months of 3 or more previous violations, the person's operating privilege shall be suspended under s. 343.30 (6) (b) 3. In addition, the person is subject to either a forfeiture of not less than \$500 nor more than \$1,000, revocation of the person's operating privilege under s. 343.30 (6) (b) 3., participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties.

SECTION 10. 125.07 (4) (e) 2. (intro.) of the statutes is amended to read:

125.07 (4) (e) 2. (intro.) After ordering a penalty under par. (bs) or (c), the court, with the agreement of the defendant, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed, except that the court may not stay, suspend or modify the suspension of a person's operating privilege required under par. (bs) or (c). The order under this subdivision shall require the defendant to do any of the following:

**ENGROSSED ASSEMBLY BILL 221**

1       **SECTION 12.** 303.065 (2m) of the statutes is created to read:

2       303.065 (2m) The department may not grant work release privileges to a  
3       prisoner who is imprisoned for a violation of s. 346.63 (1), (2), (5) or (6) and who fails  
4       to obtain the assessment or to comply with the driver safety plan ordered under s.  
5       343.30 (1q) (c) related to the violation for which he or she was imprisoned. This  
6       subsection does not apply if the prisoner does not have sufficient funds to make any  
7       payments necessary to obtain the assessment or to comply with the driver safety  
8       plan.

9       **SECTION 13.** 303.08 (1) (cg) of the statutes is created to read:

10       303.08 (1) (cg) Attendance at an assessment ordered by a court under s. 343.30  
11       (1q) (c);

12       **SECTION 14.** 303.08 (1) (cm) of the statutes is created to read:

13       303.08 (1) (cm) Attendance at a treatment program required by a driver safety  
14       plan under s. 343.30 (1q) (c);

15       **SECTION 15.** 303.08 (10m) of the statutes is created to read:

16       303.08 (10m) The sheriff may not permit a prisoner who is imprisoned for a  
17       violation of s. 346.63 (1), (2), (5) or (6) to leave the jail under sub. (1) if the prisoner  
18       fails to obtain the assessment or to comply with the driver safety plan ordered under  
19       s. 343.30 (1q) (c). This subsection does not apply if the prisoner does not have  
20       sufficient funds to make any payments necessary to obtain the assessment or to  
21       comply with the driver safety plan.

22       **SECTION 16.** 340.01 (46m) (b) of the statutes is amended to read:

23       340.01 (46m) (b) If the person has 2 or more prior convictions, suspensions or  
24       revocations, as counted under s. 343.307 (1), an alcohol concentration of 0.08 or more.

25       **SECTION 17.** 340.01 (46m) (c) of the statutes is created to read:

## ENGROSSED ASSEMBLY BILL 221

1 340.01 (46m) (c) If the person has 3 or more prior convictions, suspensions or  
2 revocations, as counted under s. 343.307 (1), ~~an alcohol concentration of more than~~  
3 ~~0.02.~~

4 SECTION 18. 342.12 (4) (a) of the statutes is amended to read:

5 342.12 (4) (a) The district attorney shall notify the department when he or she  
6 files a criminal complaint against a person who has been arrested for violating s.  
7 346.63 (1) or (2), 940.09 (1) or 940.25 ~~and who has 2 or more prior convictions,~~  
8 ~~suspensions or revocations, as counted under s. 343.307 (1).~~ Except as provided  
9 under par. (c), the department may not issue a certificate of title transferring  
10 ownership of any motor vehicle owned by the person upon receipt of a notice under  
11 this subsection until the court assigned to hear the criminal complaint issues an  
12 order permitting the department to issue a certificate of title.

13 SECTION 19. 342.12 (4) (c) 1. (intro.) of the statutes is amended to read:

14 342.12 (4) (c) 1. (intro.) The department shall issue a certificate of title  
15 transferring ownership of a motor vehicle that was owned by a person who has  
16 received a notice of intent to revoke the person's operating privilege under s. 343.305  
17 (9) (a) or has been arrested for violating s. 346.63 (1) or (2), 940.09 (1) or 940.25 and  
18 ~~who has 2 or more prior convictions, suspensions or revocations, as counted under~~  
19 ~~s. 343.307 (1),~~ if all of the following conditions are met:

20 SECTION 20. 343.10 (5) (a) 3. of the statutes is amended to read:

21 343.10 (5) (a) 3. ~~If the applicant has 2 or more prior convictions, suspensions~~  
22 ~~or revocations, as counted under s. 343.307 (1), the~~ The occupational license of the  
23 applicant shall restrict the applicant's operation under the occupational license to  
24 vehicles that are equipped with a functioning ignition interlock device if the court  
25 has ordered under s. 346.65 (6) (a) ~~1. 1d. or 1g.~~ that a motor vehicle owned by the

## ENGROSSED ASSEMBLY BILL 221

person be equipped with an ignition interlock device. A person to whom a restriction under this subdivision applies violates that restriction if he or she requests or permits another to blow into an ignition interlock device or to start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person an operable motor vehicle without the necessity of first submitting a sample of his or her breath to analysis by the ignition interlock device. If the occupational license restricts the applicant's operation to a vehicle that is equipped with an ignition interlock device, the applicant shall be liable for the reasonable costs of equipping the vehicle with the ignition interlock device.

SECTION 21. 343.30 (6) (b) of the statutes is amended to read:

343.30 (6) (b) If a court imposes suspension or revocation of a person's operating privilege under s. 125.07 (4) (bs) or (c) or 938.344 (2), (2b) or (2d), the suspension or revocation imposed shall be one of the following:

1. For a first violation, suspension for 30 to 90 days not more than one year.
2. For a violation committed within 12 months of a previous violation, suspension for not more less than one year nor more than 18 months.
3. For a violation committed within 12 months of 2 or more previous violations, revocation suspension for not more less than 2 years nor more than 5 years.

SECTION 22. 343.305 (10m) of the statutes is renumbered 343.305 (10m) (b).

SECTION 23. 343.305 (10m) (a) of the statutes is created to read:

343.305 (10m) (a) If the person's operating privilege is revoked under sub. (10), the procedure under s. 346.65 (6) shall be followed regarding the equipping of a motor vehicle owned by the person with an ignition interlock device.

SECTION 24. 346.65 (2) (b) of the statutes is amended to read:

## ENGROSSED ASSEMBLY BILL 221

plain  
(1) 346.65 (2) (b) Except as provided in ~~par. (f) and (g)~~ <sup>plain</sup>, shall be fined not less  
(2) than \$300 nor more than ~~\$1,000~~ <sup>\$2,000</sup> and imprisoned for not less than 5 days nor more  
3 than 6 months if the total number of suspensions, revocations and convictions  
4 counted under s. 343.307 (1) equals 2 within a 10-year period. Suspensions,  
5 revocations or convictions arising out of the same incident or occurrence shall be  
6 counted as one.

7 SECTION 25. 346.65 (2) (c) of the statutes is amended to read:

plain  
(8) 346.65 (2) (c) Except as provided in ~~par. (f) and (g)~~ <sup>plain</sup>, shall be fined not less  
(9) than \$600 nor more than ~~\$2,000~~ <sup>\$3,000</sup> and imprisoned for not less than 30 days nor more  
10 than one year in the county jail if the total number of suspensions, revocations and  
11 convictions counted under s. 343.307 (1) equals 3, except that suspensions,  
12 revocations or convictions arising out of the same incident or occurrence shall be  
13 counted as one.

14 SECTION 26. 346.65 (2) (d) of the statutes is amended to read:

plain  
(15) 346.65 (2) (d) Except as provided in ~~par. (f) and (g)~~ <sup>plain</sup>, shall be fined not less  
(16) than \$600 nor more than ~~\$2,000~~ <sup>\$4,000</sup> and imprisoned for not less than 60 days nor more  
17 than one year in the county jail if the total number of suspensions, revocations and  
18 convictions counted under s. 343.307 (1) equals 4, except that suspensions,  
19 revocations or convictions arising out of the same incident or occurrence shall be  
20 counted as one.

21 SECTION 27. 346.65 (2) (e) of the statutes is amended to read:

plain  
(22) 346.65 (2) (e) Except as provided in ~~par. (f) and (g)~~ <sup>plain</sup>, shall be fined not less  
(23) than \$600 nor more than ~~\$2,000~~ <sup>\$5,000</sup> and imprisoned for not less than 6 months nor more  
24 than 5 years if the total number of suspensions, revocations and convictions counted

## ENGROSSED ASSEMBLY BILL 221

1 under s. 343.307 (1) equals 5 or more, except that suspensions, revocations or  
2 convictions arising out of the same incident or occurrence shall be counted as one.

3 **SECTION 28.** 346.65 (2) (g) of the statutes is created to read:

4 346.65 (2) (g) 1. If a person convicted had an alcohol concentration of 0.15 to  
5 0.199, the applicable minimum and maximum fines under pars. (b) to (e) are doubled.

6 2. If a person convicted had an alcohol concentration of 0.20 to 0.249, the  
7 applicable minimum and maximum fines under pars. (b) to (e) are tripled.

8 3. If a person convicted had an alcohol concentration of 0.25 or above, the  
9 applicable minimum and maximum fines under pars. (b) to (e) are quadrupled.

10 **SECTION 29.** 346.65 (2e) of the statutes is amended to read:

11 346.65 (2e) If the court determines that a person does not have the ability to  
12 pay the costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d), (e) ~~or~~ (f)  
13 or (g), the court may reduce the costs, fine and forfeiture imposed and order the  
14 person to pay, toward the cost of the assessment and driver safety plan imposed  
15 under s. 343.30 (1q) (c), the difference between the amount of the reduced costs and  
16 fine or forfeiture and the amount of costs and fine or forfeiture imposed under sub.  
17 (2) (a), (b), (c), (d), (e) ~~or~~ (f) or (g).

18 **SECTION 30.** 346.65 (2g) (a) of the statutes is amended to read:

19 346.65 (2g) (a) In addition to the authority of the court under s. 973.05 (3) (a)  
20 to provide that a defendant perform community service work for a public agency or  
21 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.  
22 (2) (b) to <sup>plain</sup> ~~(f)~~ and except as provided in par. (ag), the court may provide that a  
23 defendant perform community service work for a public agency or a nonprofit  
24 charitable organization in lieu of part or all of a forfeiture under sub. (2) (a) or may  
25 require a person who is subject to sub. (2) to perform community service work for a

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1 public agency or a nonprofit charitable organization in addition to the penalties  
2 specified under sub. (2).

3 (am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or (ag) may only  
4 apply if agreed to by the organization or agency. The court shall ensure that the  
5 defendant is provided a written statement of the terms of the community service  
6 order and that the community service order is monitored. Any organization or  
7 agency acting in good faith to which a defendant is assigned pursuant to an order  
8 under this subsection has immunity from any civil liability in excess of \$25,000 for  
9 acts or omissions by or impacting on the defendant. The issuance or possibility of the  
10 issuance of a community service order under this subsection does not entitle an  
11 indigent defendant who is subject to sub. (2) (a) to representation by counsel under  
12 ch. 977.

13 SECTION 31. 346.65 (2g) (ag) of the statutes is created to read:

14 346.65 (2g) (ag) If the court determines that a person does not have the ability  
15 to pay a fine imposed under sub. (2) (b) to ~~pay~~, the court shall require the defendant  
16 to perform community service work for a public agency or a nonprofit charitable  
17 organization in lieu of paying the fine imposed or, if the amount of the fine was  
18 reduced under sub. (2e), in lieu of paying the remaining amount of the fine. Each  
19 hour of community service performed in compliance with an order under this  
20 paragraph shall reduce the amount of the fine owed by an amount determined by the  
21 court.

22 SECTION 32. 346.65 (2g) (b) of the statutes is amended to read:

23 346.65 (2g) (b) The court may require a person ordered to perform community  
24 service work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine  
25 resulted from violating s. 346.63 (2), 940.09 (1) or 940.25, to participate in community

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1 service work that demonstrates the adverse effects of substance abuse or of operating  
2 a vehicle while under the influence of an intoxicant or other drug, including working  
3 at an alcoholism treatment facility approved under s. 51.45, an emergency room of  
4 a general hospital or a driver awareness program under s. 346.637. The court may  
5 order the person to pay a reasonable fee, based on the person's ability to pay, to offset  
6 the cost of establishing, maintaining and monitoring the community service work  
7 ordered under this paragraph. If the opportunities available to perform community  
8 service work are fewer in number than the number of defendants eligible under this  
9 subsection, the court shall, when making an order under this paragraph, give  
10 preference to defendants who were under 21 years of age at the time of the offense.  
11 All provisions of par. (a) (am) apply to any community service work ordered under  
12 this paragraph.

13 **SECTION 33.** 346.65 (2g) (c) of the statutes is amended to read:

14 346.65 (2g) (c) If there was a minor passenger under 16 years of age in the  
15 motor vehicle or commercial motor vehicle at the time of the violation that gave rise  
16 to the conviction, the court may require a person ordered to perform community  
17 service work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine  
18 resulted from violating s. 346.63 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, to  
19 participate in community service work that benefits children or that demonstrates  
20 the adverse effects on children of substance abuse or of operating a vehicle while  
21 under the influence of an intoxicant or other drug. The court may order the person  
22 to pay a reasonable fee, based on the person's ability to pay, to offset the cost of  
23 establishing, maintaining and monitoring the community service work ordered  
24 under this paragraph.

→ insert 13-24 ✓



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1 SECTION 34. 346.65 (6) (a) 1. of the statutes is ~~renumbered~~ <sup>renumbered</sup> 346.65 (6) (a) 1g. and  
2 amended to read:

3 346.65 (6) (a) <sup>1.</sup> ~~Except as provided in this paragraph, the~~ <sup>The</sup> court may order a  
4 law enforcement officer to seize <sup>the</sup> a motor vehicle, or, if the motor vehicle is not ordered  
5 seized, shall order a law enforcement officer to equip the motor vehicle with an  
6 ignition interlock device or immobilize any motor vehicle <sup>used during the violation and</sup> owned by the person whose  
7 operating privilege is revoked under s. 343.305 (10) or who committed a violation of  
8 s. 346.63 (1) (a), <sup>2. or</sup> (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b),  
9 (c) or (d) if the person whose operating privilege is revoked under s. 343.305 (10) or  
10 who is convicted of the violation has 2 or more prior suspensions, revocations or  
11 convictions that would be counted under s. 343.307 (1). ~~The court shall not order a~~  
12 ~~motor vehicle equipped with an ignition interlock device or immobilized if that would~~  
13 ~~result in undue hardship or extreme inconvenience or would endanger the health~~  
14 ~~and safety of a person.~~

15 SECTION 35. 346.65 (6) (a) 1d. of the statutes is created to read:

16 346.65 (6) (a) 1d. Except as provided in this subdivision, the court may order  
17 a law enforcement officer to equip with an ignition interlock device a motor vehicle  
18 owned by the person whose operating privilege is revoked under s. 343.305 (10) or  
19 who committed a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a),  
20 (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d). The court shall not order a motor vehicle  
21 equipped with an ignition interlock device if that would result in undue hardship or  
22 extreme inconvenience or would endanger the health or safety of a person.

23 SECTION 36. 346.65 (6) (a) 2. of the statutes is repealed.

24 SECTION 37. 346.65 (6) (a) 2m. of the statutes is amended to read:

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1 346.65 (6) (a) 2m. A person who owns a motor vehicle subject to seizure,  
2 ~~equipping with an ignition interlock device or immobilization~~ under this paragraph  
3 shall surrender to the clerk of circuit court the certificate of title issued under ch. 342  
4 for ~~every~~ <sup>the</sup> motor vehicle ~~owned by the person~~ <sup>that is subject to seizure</sup>. The person shall comply with this  
5 subdivision within 5 working days after receiving notification of this requirement  
6 from the district attorney. When a district attorney receives a copy of a notice of  
7 intent to revoke the operating privilege under s. 343.305 (9) (a) ~~(of a person who has~~ <sup>plain</sup>  
8 ~~2 or more~~ <sup>prior</sup> convictions, suspensions or revocations, as counted under s. 343.307 (1), <sup>sent</sup>  
9 or when a district attorney notifies the department of the filing of a criminal  
10 complaint against a person under s. 342.12 (4) (a), the district attorney shall notify  
11 the person of the requirement to surrender ~~all certificates~~ <sup>the certificate</sup> of title to the clerk of circuit  
12 court. The notification shall include the time limits for that surrender, the penalty  
13 for failure to comply with the requirement and the address of the clerk of circuit  
14 court. The clerk of circuit court shall promptly return ~~each~~ <sup>the</sup> certificate of title  
15 surrendered to the clerk of circuit court under this subdivision after stamping the  
16 certificate of title with the notation "Per section 346.65 (6) of the Wisconsin statutes,  
17 ownership of this motor vehicle may not be transferred without prior court approval".  
18 Any person failing to surrender a certificate of title as required under this  
19 subdivision shall forfeit not more than \$500.

## 15 2014 } SECTION 38. 346.65 (6) (c) of the statutes is amended to read:

21 346.65 (6) (c) The district attorney of the county where the motor vehicle was  
22 seized, ~~of the county where the owner's operating privilege was ordered revoked~~  
23 ~~under s. 343.305 (10) or where the owner committed the violation under s. 346.63 (1)~~ <sup>was convicted of</sup>  
24 ~~(a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d),~~  
25 shall commence an action to forfeit the motor vehicle within 30 days after the motor

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1 vehicle is seized. The action shall name the owner of the motor vehicle and all  
2 lienholders of record as parties. The forfeiture action shall be commenced by filing  
3 a summons, complaint and affidavit of the law enforcement agency with the clerk of  
4 circuit court. Upon service of an answer, the action shall be set for hearing within  
5 60 days after the service of the answer. If no answer is served or no issue of law or  
6 fact joined and the time for that service or joining of issues has expired, the court may  
7 render a default judgment as provided in s. 806.02.

8 **SECTION 39.** 346.65 (6) (d) of the statutes is amended to read:

9 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of  
10 proving to a reasonable certainty by the greater weight of the credible evidence that  
11 the motor vehicle is a motor vehicle owned by a person ~~whose operating privilege was~~  
12 ~~ordered revoked under s. 343.305 (10) or~~ who committed a violation of s. 346.63 (1)  
13 (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d)  
14 and, ~~if the seizure is under par. (a) 1.,~~ that the person had 2 or more prior convictions,  
15 suspensions or revocations, as counted under s. 343.307 (1) ~~or, if the seizure is under~~  
16 ~~par. (a) 2., 3 or more prior convictions, suspensions or revocations, as counted under~~  
17 ~~s. 343.307 (1).~~ If the,, (c) or (d),, (c) or (d) state fails to meet the burden of proof  
18 required under this paragraph, the motor vehicle shall be returned to the owner upon  
19 the payment of storage costs.

20 **SECTION 40.** 346.655 (1) of the statutes is amended to read:

21 346.655 (1) ~~On or after July 1, 1988, if~~ If a court imposes a fine or a forfeiture  
22 for a violation of s. 346.63 (1) or (5), or a local ordinance in conformity therewith, or  
23 s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a  
24 vehicle, it shall impose a driver improvement surcharge in an amount of \$340 \$345

## ENGROSSED ASSEMBLY BILL 221

1 in addition to the fine or forfeiture, penalty assessment, jail assessment and crime  
2 laboratories and drug law enforcement assessment.

3 **SECTION 41.** 346.655 (2) (a) of the statutes is amended to read:

4 346.655 (2) (a) Except as provided in par. (b), the clerk of court shall collect and  
5 transmit the amount under sub. (1) to the county treasurer as provided in s. 59.40

6 (2) (m). The county treasurer shall then make payment of ~~37.6%~~ <sup>127.64 127.83</sup> 38.5% of the amount  
7 to the state treasurer as provided in s. 59.25 (3) (f) 2.

8 **SECTION 42.** 346.655 (2) (b) of the statutes is amended to read:

9 346.655 (2) (b) If the forfeiture is imposed by a municipal court, the court shall  
10 transmit the amount to the treasurer of the county, city, town or village, and that

11 treasurer shall make payment of ~~37.6%~~ <sup>127.84 132.83</sup> 38.5% of the amount to the state treasurer

12 as provided in s. 66.12 (1) (b). The treasurer of the city, town or village shall transmit

13 the remaining ~~62.4%~~ <sup>112.17</sup> 61.5% of the amount to the treasurer of the county.

14 **SECTION 42m.** 346.93 (2f) of the statutes is created to read:

15 346.93 (2f) Except as provided in sub. (2g), any person violating this section  
16 may have his or her operating privilege suspended under s. 343.30 (6) (b) 1.

17 **SECTION 43.** 346.93 (2g) of the statutes is created to read:

18 346.93 (2g) Any person violating this section may be required to forfeit not less  
19 than \$20 nor more than \$400 and shall have his or her operating privilege:

20 (b) For a violation committed within 12 months of a previous violation,  
21 suspended under s. 343.30 (6) (b) 2.

22 (c) For a violation committed within 12 months of 2 or more previous violations,  
23 suspended under s. 343.30 (6) (b) 3.

24 **SECTION 44.** 346.95 (2) of the statutes is amended to read:

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1 346.95 (2) Any person violating s. 346.89 (1), 346.93 or 346.94 (2), (4) or (7) may  
2 be required to forfeit not less than \$20 nor more than \$400.

3 *hser 18-23* → SECTION 45. 800.03 (4) of the statutes is repealed.

4 *insert 18-23* → SECTION 46. 938.344 (2) (intro.) of the statutes is amended to read:

5 938.344 (2) (intro.) If a court finds a juvenile committed a violation under s.  
6 125.07 (4) (b) or 125.09 (2), or a local ordinance that strictly conforms to one of these  
7 statutes that statute, the court shall order one or any combination of the following  
8 penalties:

9 SECTION 47. 938.344 (2) (c) of the statutes is amended to read:

10 938.344 (2) (c) *Accomplished by Act 84* For a violation committed within 12 months of 2 or more  
11 previous violations, a forfeiture of not more than \$500, revocation suspension of the  
12 juvenile's operating privilege as provided under s. 343.30 (6) (b) 3. or the juvenile's  
13 participation in a supervised work program or other community service work under  
14 s. 938.34 (5g).

15 *new insert 18-25* SECTION 48m. 938.344 (2b) (intro.) (b) and ~~and~~ of the statutes are amended to  
16 read:

17 938.344 (2b) (intro.) If a court finds a juvenile committed a violation under s.  
18 125.07 (4) (a) or (b), or a local ordinance which strictly conforms to s. 125.07 (4) (a)  
19 or (b), the court shall order one or any combination of the following penalties:

20 (b) For a violation committed within 12 months of a previous violation, a  
21 forfeiture of not less than \$300 nor more than \$500, suspension of the juvenile's  
22 operating privilege as provided under s. 343.30 (6) (b) 2. or the juvenile's  
23 participation in a supervised work program or other community service work under  
24 s. 938.34 (5g). In addition to any penalty imposed under this paragraph, the court  
25 shall suspend the juvenile's operating privilege as provided in s. 343.30 (6) (b) 2.

*new insert 18-25* ✓

## ENGROSSED ASSEMBLY BILL 221

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of \$500, ~~revocation of the juvenile's operating privilege as provided under s. 343.30 (6) (b) 3.~~ or the juvenile's participation in a supervised work program or other community service work under s. 938.34 (5g). In addition to any penalty imposed under this paragraph, the court shall suspend the juvenile's operating privilege as provided in s. 343.30 (6) (b) 3.

Accomplished by 97 Act 89  
SECTION 49. 938.344 (2d) (c) of the statutes is amended to read:

938.344 (2d) (c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of \$500, ~~revocation~~ suspension of the juvenile's operating privilege as provided under s. 343.30 (6) (b) 3. or the juvenile's participation in a supervised work program or other community service work under s. 938.34 (5g).

SECTION 50. 940.09 (1d) of the statutes is renumbered 940.09 (1d) (b).

SECTION 51. 940.09 (1d) (a) of the statutes is created to read:

940.09 (1d) (a) If a person ~~commits~~ <sup>who committed</sup> an offense under sub. (1) (a), (b), (c) or (d), the procedure under s. ~~343.30 (6)~~ <sup>343.301 shall</sup> ~~may be followed regarding~~ <sup>if the court orders</sup> the equipping of a motor vehicle owned by the person with an ignition interlock device <sup>or the immobilization of the motor vehicle</sup>

SECTION 52. 940.25 (1c) of the statutes is created to read:

940.25 (1c) If the person convicted under sub. (1) (a), (b), (c) or (d) had any previous suspensions, revocations or convictions that would be counted under s. 343.307 (1) and had an alcohol concentration of 0.15 to 0.199, the applicable maximum fine for the conviction under sub. (1) (a), (b), (c) or (d) is doubled. If the person convicted under sub. (1) (a), (b), (c) or (d) had any previous suspensions, revocations or convictions that would be counted under s. 343.307 (1) and had an alcohol concentration of 0.20 to 0.249, the applicable maximum fine for the conviction

has 940.09 or 940.25 convictions, any previous or revocations, as counted under s. 343.307 (1)

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## SECTION 52

1 under sub. (1) (a), (b), (c) or (d) is tripled. If the person convicted under sub. (1) (a),  
2 (b), (c) or (d) had any previous suspensions, revocations or convictions that would be  
3 counted under s. 343.307 (1) and had an alcohol concentration of 0.25 or above, the  
4 applicable maximum fine for the conviction under sub. (1) (a), (b), (c) or (d) is  
5 quadrupled.

6 ~~SECTION 53. 940.25 (1d) of the statutes is renumbered 940.25 (1d) (b).~~ *940.25 (1d) (b)*

7 ~~SECTION 54. 940.25 (1d) (a) of the statutes is created to read:~~

8 ~~940.25 (1d) (a) If a person commits an offense under sub. (1) (a), (b), (c) or (d)~~  
*who committed*  
9 ~~the procedure under s. 346.65 may be followed regarding the equipping of a motor~~  
*has one or more prior convictions, suspensions or revocations, as counted*  
10 ~~vehicle owned by the person with an ignition interlock device.~~  
*343.301 or the immobilization of the motor vehicle*

11 ~~SECTION 55. 1997 Wisconsin Act 84, section 2 is repealed.~~

12 ~~SECTION 56. 1997 Wisconsin Act 84, section 3 is repealed.~~

13 ~~SECTION 57. 1997 Wisconsin Act 84, section 4 is repealed.~~

14 ~~SECTION 58. 1997 Wisconsin Act 84, section 5 is repealed.~~

15 ~~SECTION 59. 1997 Wisconsin Act 84, section 30 is repealed.~~ *Act 84 eff. 1/1/00*

16 ~~SECTION 60. 1997 Wisconsin Act 84, section 31 is repealed.~~

17 ~~SECTION 61. 1997 Wisconsin Act 84, section 160 is repealed.~~

18 ~~SECTION 62. 1997 Wisconsin Act 84, section 161 is repealed.~~

19 ~~SECTION 63. 1997 Wisconsin Act 84, section 162 is repealed.~~

20 ~~SECTION 64. Nonstatutory provisions.~~ *health and family services*

21 (1) The departments of corrections and transportation shall jointly study and  
22 evaluate the desirability of using treatment programs and other alternatives to  
23 incarceration as a way to reduce the length of incarceration or the need for  
24 incarceration of persons convicted of a 2nd or subsequent violation of operating a  
25 motor vehicle while under the influence on an intoxicant, controlled substance or

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cm

and (6) and (7)(cm), 343.30(1p) (b)  
(19)(4), 343.303

1 other drug. The departments shall consult with the counties regarding this study  
2 and evaluation. No later than the first day of the 9th month beginning after the  
3 effective date of this subsection, the departments shall jointly submit a report to the  
4 legislature in the manner provided under section 13.172 (2) of the statutes that  
5 contains the conclusions of the departments' study and evaluation and any  
6 recommendations concerning implementation of the conclusions.

## SECTION 65. Initial applicability.

(3)(a) and (b), (5)(b), (9)(c)  
1. and 5.a. and (d) and (10)(e)  
2g

8 (1) MANDATORY OPERATING PRIVILEGE SUSPENSIONS. The treatment of sections  
9 125.07 (4) (bs), (c) and (e) 2. (intro.), 343.30 (6) (b), 346.93 (2g), 346.95 (2) and 938.344  
10 (2) (intro.) and (c), (2b) and (2d) (c) of the statutes first applies to violations committed  
11 on the effective date of this subsection, but does not preclude the counting of other  
12 violations as prior violations for sentencing a person or for suspending or revoking  
13 a person's operating privilege.

14 (2) INTOXICATED DRIVER PROGRAMS. The treatment of sections 85.55, 340.01  
15 (46m) (b) and (g), 242.12 (4) (a) and (b) (intro.), 343.10 (5) (a) 3, 343.305 (2m) (b),  
16 346.65 (6) (a) 1., 2. and 2m, (c) and (d), 940.09 (1d) (a) and 940.25 (1d) (a) of the  
17 statutes and the renumbering of sections 343.30 (1p), 940.09 (1d) and 940.25 (1d)  
18 of the statutes first apply to violations committed or refusals occurring on the  
19 effective date of this subsection, but does not preclude the counting of other  
20 convictions, suspensions or revocations as prior convictions, suspensions or  
21 revocations for purposes of administrative action by the department of  
22 transportation, sentencing by a court, revocation or suspension of operating  
23 privileges or determining the prohibited alcohol concentration.

24 (3) INTOXICATED DRIVER IMPROVEMENT SURCHARGE. The treatment of sections  
25 20.395 (5) (ek), 20.435 (6) (hx) and 346.655 (1) and (2) (a) and (b) of the statutes first

344.576 (2)(b), 346.63 (2g) and (2m)  
2g 2m(2m) (b) 1/2  
2m



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1 applies to intoxicated driver improvement surcharges imposed for violations  
2 committed on the effective date of this subsection.

**SECTION 66. Appropriation changes.**

3  
4 (1) PRETRIAL INTOXICATED DRIVER INTERVENTION GRANTS. In the schedule under  
5 section 20.005 (3) of the statutes for the appropriation to the department of  
6 transportation under section 20.395 (5) (jr) of the statutes, as affected by the acts of  
7 1999, ~~the dollar amount is increased by \$115,000 for fiscal year 1999-00 and the~~  
8 dollar amount is increased by \$314,700 for fiscal year 2000-01 to provide additional  
9 funding for grants under the pretrial intoxicated driver intervention grant program.

**SECTION 67. Effective date.**

10  
11 (1) This act takes effect on the first day of the 4th month beginning after  
12 publication.

(END)

Insert 22-12